S. HRG. 98-1029

ENFORCEMENT OF FEDERAL REGULATIONS AND PENALTIES FOR SHIPMENTS OF HAZARDOUS AND RADIOACTIVE MATERIALS

HEARING

BEFORE THE

SUBCOMMITTEE ON ENERGY, NUCLEAR PROLIFERATION, AND GOVERNMENT PROCESSES

OF THE

COMMITTEE ON GOVERNMENTAL AFFAIRS UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

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ENFORCEMENT OF FEDERAL REGULATIONS AND PENALTIES FOR SHIPMENTS OF HAZARDOUS AND RADIOACTIVE MATERIALS

WEDNESDAY, MAY 9, 1984

U.S. SENATE,
SUBCOMMITTEE ON ENERGY,
NUCLEAR PROLIFERATION, AND GOVERNMENT PROCESSES,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, DC.

The subcommittee met at 10:05 a.m. in room 342, Dirksen Senate Office Building, Hon. Charles H. Percy, chairman of the subcommittee, presiding.

Present: Senator Percy.

OPENING STATEMENT OF SENATOR PERCY

Senator PERCY. I want to first cordially welcome all of our witnesses today and those of you who are interested in this subject area. I am pleased to call to order this hearing of the Subcommittee on Energy, Nuclear Proliferation, and Government Processes, which is inquiring today into the enforcement of regulations and penalties for the shipment of hazardous and radioactive materials.

Every day, 250,000 shipments of dangerous materials are made by trucks, trains, aircraft, and ships across America. Every day, the citizens of our Nation literally stake their lives on these shipments. Ten years ago, with this in mind, the Congress passed the Hazardous Materials Transportation Act. The Department of Transportation, Nuclear Regulatory Commission, and the Environmental Protection Agency all laid down rules and were empowered to impose stiff penalties for their violation.

The intent of Congress is very, very clear in this area. When these safety rules are disregarded, tragedy can result. In one recent Illinois case, we were very lucky. Had it not been for the vigilance of an Illinois State trooper equipped with a radiation detector, radioactive restaurant tables might have been installed in restaurants throughout northern Illinois. We discovered the unmarked, illegal shipment, and potential and serious injury to individuals, and countless number of people, was averted.

Other communities have not been so fortunate. In 1978, in Waverly, TN, safety violations led to the derailment and rupturing of a tank car containing liquified petroleum gas. A terrible explosion right in the heart of this small town killed 16 people, injured 46 others, and caused nearly $2 million in property damage. Today, 6 years later, downtown Waverly still shows the scars of this one incident.

Following this terrible accident, the Federal Railroad Administration did not impose any penalties for the safety violation—the failure of the train crew to perform an air brake test required by law. It did impose two penalties totaling $4,000 for the railroad's failure to certify shipping orders, a hardly trivial matter, since misprepared papers can delay or endanger emergency crews following an accident of this kind. Despite the deaths and injury, the DOT penalties were just 20 percent of the maximum allowed by law.

Nor is this an isolated example. Twenty months ago, a freight train carrying flammable chemicals derailed in Livingston, LA. Toxic gasses spewed into the air. Two tank cars exploded like rockets, destroying nearby residences. Miraculously, no one was killed, but 3,000 people were evacuated for 2 weeks; $14 million in property damage was suffered by this small town; and Livingston is still cleaning up the toxic debris. This accident occurred because the train engineer was intoxicated and let his girlfriend drive the train as it sped through the sleeping town. In this case, no Federal sanctions were imposed, and no penalties were collected.

The damage was $14 million in property, alone, and the inconvenience to 3,000 people very great. I wonder what the people of that city would think of this Government when the Congress requires and provides for stiff penalties, yet no penalty of any kind is assessed. Crime, negligence, malfeasance, gross misconduct pays apparently, and is not penalized.

Just 2 weeks ago, in Oakland, CA, a city that I lived in during part of World War II, over 20 residents of nearby homes were injured when two truck drivers fell asleep while loading deadly chlorine vapors.

This case is still pending, and no decisions have been made as to what penalties should be imposed for which violations. But if recent history is any guide, the proposed penalty will be very small, and the final penalty smaller still. To my knowledge, DOT has never imposed the statutory maximum on any violator, no matter how grave the offense or how terrible the consequences.

A recent Congressional Research Service report, summarized in written testimony, disclosed that penalties for radioactive shipping violations are almost always less than 10 percent of the statutory maximum. My own staff investigation confirmed this and found the problem to be just as serious for nonradioactive hazardous materials shipments.

In the Federal Highway Administration, for example, only 5 percent of the statutory maximum was imposed and collected over a recent 3-month period. Penalty collections for hazardous highway shipment violations are down 70 percent from the level of just 2 years ago.

Trucks, railroads, airlines, and ships have an excellent safety record in recent years. I want to go out of my way to commend them for that safety record and a large part of them have been responsible for their diligence and for the diligence of those oversight executive offices that have that responsibility.

But we want to make sure that this record is maintained.

I recognize that imposing and collecting penalties is only part of this task. But I do not think the safety record is so good, the risk of tragedy so remote, and the deterrent effect of penalties so uncertain that anyone can justify a lax enforcement policy.

The people in cities and towns across our Nation are fearful of hazardous and radioactive shipments. They have placed their faith in the laws that Congress has passed. These laws provide tough penalties for violations. It is the responsibility of the DOT, NRC, and EPA to enforce these laws and impose the penalties that Congress had in mind.

In discussing the enforcement of Federal regulations and penalties for shipments of hazardous materials, I would just like to say that this particular hearing and the investigation that preceded it is a part of a series of studies and analyses we have made in this particular subcommittee of the Governmental Affairs Committee. The subcommittee's efforts have resulted in legislation that is now the law of the land, and we have also improved the effectiveness of legislation that existed before. The purpose of this particular hearing is to just simply serve notice that we intend to carry out and see that in our oversight operations, the intent and purpose of Congress is carried out by the executive branch of Government and by regulatory commissions.

The first of this type of hearing involved the collection of debts due the United States. We found a scandalous condition where obligations assumed by citizens of this country and obviously, countries abroad, too, were not being fulfilled and paid. We revealed in that hearing the disgraceful conditions that we had in this country where obligations were not being paid back, whether it was students, whether it was doctors, who had borrowed under the Student Loan Program, and whether it is farmers or business people, whoever it may be.

We toughened up the law. We demanded and insisted upon performance. President Reagan is the first President to embrace that law. Under David Stockman, OMB, for the first time, embraced it and backed it. It was signed into law, and we have collected, as a result, $5 billion of money that the Comptroller General said we never would have seen if we hadn't really stiffened and toughened the law and gotten down to carrying out the intent and purpose of a loan that is a loan, not a grant.

Then we looked into penalties imposed by Federal judges in fines because our jails are so crowded that major drug abusers and pushers were let off with just a fine. We discovered that the fines were imposed and never paid. Millions, hundreds of millions of dollars, not paid, in fines. Crime did pay. We are asking the judicial system to tighten up its collection system and see that those debts are paid.

That led into a series of grants to doctors. Grants, total medical expenses paid, of $50,000, providing they would serve for every year that they get paid their medical school—serve in an impacted area where we can't get enough doctors. I think we had in this room just a month or two ago a hearing and evidence that showed that flagrantly the regulations and rules were not being enforced, were being abused, and we are turning that around, and we are seeing that there is compliance.

So this is the fourth, now, of a major area that we have begun to look at, and we deeply appreciate the fine cooperation we have had from everyone that we have approached on this subject. All we are trying to do is say that once we pass a law, we don't intend to just sit there and not have it carried out. We want to see that the law and the intent and the purpose of the law is carried out, or, if it doesn't serve a useful purpose, change the law.

But as long as it is on the books, let's see what we can do about it.

I am therefore very pleased, indeed, to have with us as our first witness in this particular hearing where we have a unique opportunity to get a firsthand account of how Federal safety regulations are enforced on our roads and highways. Our first witness is Illinois State Trooper Ronald Reese. Trooper Reese distinguished himself on duty nearly 3 months ago when he discovered an illegal shipment of radioactive restaurant tables on the Illinois State Tollroad. These contaminated tables were headed for restaurants in the Chicago area.

I would like to commend Trooper Reese and the rest of the Illinois State Police Force. If not for his fine work, this shipment of tables and many like it might today be injuring thousands of unsuspecting restaurant workers and patrons throughout northern Illinois.

Trooper Reese, I look forward to hearing your account of this incident.

TESTIMONY OF RONALD REESE, ILLINOIS STATE POLICE TROOPER, DISTRICT 15, OAK BROOK, IL

Mr. REESE. Thank you very much, sir. Good morning.

I have been asked to appear this morning to speak with you and provide you with information in regards to the enforcement program dealing with the transportation of hazardous materials.

In our State, Illinois, we have a hazardous material program that was mandated by the Illinois Department of Transportation which solely provides the enforcement policies to the Illinois State Police. The Illinois State Police has a 45-man section which is the hazardous materials section, and it requires special training for these particular officers.

It is a 3-week training course at our police academy in Springfield, IL, where the officers of the hazardous materials section are instructed in the enforcement policies. In addition, there is a 2-week radiation monitoring course and radiation defense officers course.

As of 1983, documentation of the enforcement work came out for the previous year and indicated that we had 10,642 hazardous materials inspections conducted. These are inspections of vehicles that were transporting hazardous materials in Illinois. Of that number, there were 1,617 notices of apparent violations, which meant that some of these vehicles were found to be in violation of transportation of hazardous materials.

We issued warnings to 1,722. A warning would be an indication that it was a minor violation, a matter which generally could be corrected on the site.

There were 5,079 hazardous materials violations cited. In 1983, in the State of Illinois, we had 131 hazardous materials incidents reported, which were an incident of a spill, a leak, or a release of any type of hazardous material into the environment.

In 1983, we had 188 radiological surveys conducted on vehicles that had been transporting a radioactive material of some sort.

The facts gathered of this activity report show that 3,339 vehicles were in noncompliance, or 31.3 percent of the vehicles inspected for transporting hazardous materials were found to be in noncompliance. The most common of these violations were violations of proper display.

The second most common were violations of shipping papers. Shippers are not completing the shipping papers in the proper manner described by the regulations—accessibility, blocking, and bracing. A load of hazardous materials being placed into a vehicle where it is not accessible for emergency personnel to get to if necessary, would require materials to be loaded into vehicles in a manner where they were not secured or blocked or braced, or where normal transportation could create an additional hazard on safety requirements required on cargo tanks.

The most common safety regulation to implement involves the transportation of hazardous material in cargo tanks. These carry a commodity commonly referred to and recognized as gasoline. This commodity is transported much more than any other hazardous material available and yet the safety requirements on cargo tanks are in a position where they put us in much greater danger than a cask containing, say, spent nuclear fuel.

Governor Thompson has mandated that all shipments of spent nuclear fuel are escorted by the Illinois State Police hazardous material officer. In addition, the health physicists from the department of nuclear safety, in the case of an incident, make certain there are properly trained personnel on scene to help with any problems that could arise from a shipment or accident of this type.

In regard to the shipments of radioactive materials, the incident which I was fortunate enough to become involved with took place as a result of a vehicle that was driving up the Illinois tollway on the morning of January 31. The exact site was on Interstate 294, the Tri-State Tollway, just north of Cormak Road, which is approximately 5 to 10 miles west of the city of Chicago. I was on a stationary patrol monitoring the second division vehicles passing up and down the tollway. The radiation monitor, Eberline Model R–19, which is mounted in the squad car, was activated by the presence of radiation. My first observation was to attempt to locate a vehicle that displayed a radioactive placard indicating to me there would be some type of radioactive shipment in the immediate area.

None of the vehicles that were leaving the plaza at this particular time displayed a placard. Therefore, I was able to single out two semitrucks that were going northbound. Separating the two vehicles driving in traffic, I determined that one vehicle activated the monitor on more than one occasion. I had the occasion to stop this vehicle, spoke with the truck driver, and asked him for his shipping papers to indicate to me what type of load he was transporting.

I explained to him why I stopped him, because of the monitor being activated. He had no knowledge of transporting any type of hazardous material whatsoever. His only statement to me was that, "in our company, we don't ever transport hazardous materials."

Looking through the shipping papers, I found no indication of any commodity to be a hazard. With an additional Eberline RO–3, a hand unit which measures the amount of radiation, I physically went into the back of the vehicle and determined that he did have a radioactive source present.

I relocated the vehicle to a safe place, a maintenance facility, where I could isolate the truck from other traffic and personnel. I contacted my section supervisor in Springfield, and the Illinois Department of Transportation Hazardous Materials Section. I advised them of my

findings of what I had located. We did a complete package and vehicle survey on the emitting packages in the vehicle. The information gathered from the Illinois Department of Transportation section in Springfield indicated that the source that we had discovered was cobalt 60 contaminated metal.

This contaminated metal had originated in Juarez, Mexico, in the presence of a cobalt 60 radiation machine that is used for radiation therapy and treatment. The machine had gone to a scrap yard. It had been scrapped as scrap metal. We found who bought the scrap metal and manufactured the table pedestals which were shipped to the restaurants in Des Plaines. With the assistance of the Illinois Department of Nuclear Safety and the U.S. Nuclear Regulatory Commission, we isolated the packages of contaminated metal, contacted the shipper in St. Louis, MO; and made arrangements within compliance to regulations to get the contaminated metal returned to its rightful owner to be properly disposed of.

During the complete investigation, I received a total of 2.5 millirem of radiation exposure to myself. This was detected by means of a pocket dosimeter, which is worn any time we are exposed in any area of radiation. Comparatively a chest x ray emits approximately 25 millirem. The total amount of radiation that was released as a result of the contaminated metals, the part I located, was just part of a shipment. There had been other parts to this shipment that were manufactured into reenforcement rods and other table pedestals that were later discovered throughout the city and the surrounding suburbs of Chicago.

The Nuclear Regulatory Commission had been and still is investigating the conditions of the product distributor in St. Louis, MO.

As a result of this incident, the Illinois State Police is increasing the hazardous materials section. There will be 25 additional officers in the Hazardous Material Program within the next 18 months. We are presently training these officers at our police academy, and the first class is going to start the middle of next month, June 11.

I thank you for allowing me the opportunity to come here and speak with you this morning. If there are any questions, I will be happy to answer them to the best of my ability and once again, I thank you very much.

Senator PERCY. Thank you very much, indeed, Trooper Reese.

We want to commend you for your diligence. Had you not been on the job to monitor these radioactive pedestals than the radioactive shipment of material to other States might never have been discovered. Then again, we might have discovered them only after people had been injured.

Isn't it true that you were just plain lucky that you happened to be in the right place at the right time with the right equipment?

Mr. REESE. Definitely, I was plain lucky. As a matter of fact, speaking with the driver during the investigation, this shipment was actually scheduled to leave the day before. We had a heavy snowstorm the prior day, and the regular driver on this delivery route did not come to work. The carrier contacted the union facility. The driver came out; the driver took the truck out; he got lost; he couldn't find his way. They told him to bring it back in.

So what happened, the shipment was actually scheduled to go a day before, but in turn, the snowstorm helped us out in this instance.

Senator PERCY. As we have seen by pictures, the shipment was an unmarked truck. The trucker didn't know these table pedestals were radioactive. We're not sure if the shipper knew, but if he didn't he should.

According to your understanding of applicable laws and regulations, were violations actually committed, and if so, who committed them, and how serious do you consider the commission of those violations?

Mr. REESE. What violations were committed? In my investigation—I held an investigation as I would any shipment of radioactive materials. The violations included placard violations; the vehicle was not identified, there was not proper labeling, marking; and shipping paper violations. If a violation is cited, I believe the burden of responsibility would lay with the shipper. Being that the carrier had no idea of what he was transporting, the responsibility of properly shipping a commodity would, in my opinion, rest with that of the shipper.

What action is being taken regarding these violations? The U.S. Nuclear Regulatory Commission is involved in an investigation before and during.

At the present time, Illinois, to my knowledge, is not taking any action over the Nuclear Regulatory Commission.

Senator PERCY. To your knowledge, did the shipper actually know that this was a dangerous shipment?

Mr. REESE. The best answer to that question, sir, on January 25, the Nuclear Regulatory Commission was in the shipper's facility in St. Louis. They determined that they did have contaminated metals. This shipment originally was to be shipped or sent out on January 13, which would make it approximately 2 weeks prior to the NRC's discovery.

I was able to locate the shipment on January 31. There was a problem. Even though the problem was discovered after this shipment left, it could have been prevented.

Senator PERCY. Illinois, I know, does impose stiff penalties for violations of radioactive shipping regulations. In this particular case, no penalties were imposed. Why is this the case?

Mr. REESE. As I briefly touched on in the answer to an earlier question, at this time, Illinois is not taking any action because of an investigation by another agency that superseded this particular incident. I don't know if we will take action. I'm not in a position to make that particular determination. That would have to come from the Illinois Department of Transportation, Hazardous Materials Section.

Senator PERCY. So actually, the case has been transferred to the Federal Nuclear Regulatory Commission, and it is their responsibility, then, to impose a penalty?

Mr. REESE. To my knowledge.

Senator PERCY. And State action has been preempted by them?

Mr. REESE. To my knowledge, that is the way this case is being held.

Senator PERCY. I would like to ask you not just about radioactive shipping violations, but about other kinds of hazardous materials. Can you tell me about what you and other Illinois State troopers do to keep our highways and communities safe from poisons, explosive and toxic

substances, and could you give us an example of violations that you have seen?

Mr. REESE. OK. What we have been doing in the recent year, we have been having surprise inspections. We will put together a task force of hazardous materials officers, and we will move in a particular area of the State at which time we will stop all second division truck traffic that is traveling through that area. All vehicles will be stopped; shipping papers will be checked; and sealed vehicles will be inspected. We will inspect every vehicle that goes through a particular area.

In addition to this, the tollway district to which I am assigned, the second division enforcement group of officers basically work overweights and motor carrier of hazardous materials. Any time there is a problem or that they come across a statement or something they don't understand, and they feel it is a problem, they will immediately contact the hazardous materials officer, and we will inspect that vehicle.

But with our surprise inspections, we have had great success.

Senator PERCY. Having reviewed some of the cases the Federal agencies have provided this subcommittee, it appears that many of the trucking violations involve such things as failing to placard; that is, failing to visibly label a truck as hazardous. Here is such an example right here.

[Indicating photograph.]

There is no label of any kind on that truck.

Failing to have accurate shipping papers, failing to use proper containers, and here is an example of that.

[Indicating.]

And failing to secure these containers tightly or placing hazardous materials too close to the driver's compartment, and here is another photographic example of that. A picture is better than 1,000 words.

Trooper Reese, do most truckers and shippers, particularly the smaller companies, know about these rules, and are these truly serious violations?

For example, tell me why failing to placard is enough of a threat to public safety to warrant a stiff penalty?

Mr. REESE. Failure to placard is one of the major penalties; to me, that should require a stiff penalty. Emergency response personnel are trained, and our office is one of the agencies responsible for training emergency response personnel. In the case of an incident, if you have a vehicle that has been involved in a traffic accident or whatever the case may be, the emergency response people will look for a hazardous placard on that vehicle. If there is no placard at all, it is sad to say, but the average firefighter or personnel that would be arriving to a scene, would just move right in and take whatever actions they had been required to do. There could be a hazardous material on board this vehicle that could create a great danger.

Shipping paper violations—when we want to determine what a cargo consists of, we look at the cargo; we look at the package; we look at the cargo on the shipping paper. Hopefully, all of these things are correct. For a firefighter to be handling a flammable condition based on the information we have available to us and we determined that it would be a corrosive or organic peroxide or some other chemical that you would not fight in the same manner would create a great additional danger to the lives and safety of the public.

Senator PERCY. In your judgment, are the penalties imposed in Illinois large enough to deter violations of this kind by interstate trucking companies?

Mr. REESE. I have been fortunate to speak with people from other agencies around the country. The Nuclear Regulatory Commission and the Environmental Protection Agency, have representatives in Illinois, and we have been told that the fines in Illinois are the stiffest of all States involved. If you commit a hazardous materials violation, you had best do it in any other State than Illinois, because in Illinois, it is going to cost you. I have had a case myself where one penalty against a carrier was $12,000.

Senator PERCY. Yes. We have no concern about intrastate. Now, how about interstate trucks, trucking companies making shipments to or from Illinois or just passing through?

What percentage of violations involve interstate shipments?

Mr. REESE. Interstate shipments? I would say that the percentage would be less than that of intrastate. Your interstate shipments, generally, your cargo is loaded at one facility and it is going all the way through to the other facility. With short hauls, they constitute more violations. On the tollway itself in Illinois, we are kind of a unique highway in that we bypass the major metropolitan city, that being Chicago. Therefore, the interstate traffic is much greater than the percentage of local and through trucking. I would say approximately 20 percent interstate.

Senator PERCY. Do you feel the rules are being enforced adequately in other States to ensure safety of these shipments? Are the penalties imposed elsewhere enough to deter illegal shipments of hazardous or radioactive materials?

Mr. REESE. Relating to the other States, I can speak in regards to the States adjacent to, surrounding Illinois, the ones that we have common proximity with. Wisconsin, to my knowledge, has no program put together on enforcement of hazardous materials other than tanker inspection stations. Indiana is just getting started. I was in Indiana last month to speak with a group of law enforcement people there. They are just getting their program together.

In Missouri—we trained some officers in Missouri. There will be additional officers in the class in June. We are getting that program started there. In Michigan, hazardous materials violations constitutes the same fine as a traffic violation. It is written up on a traffic ticket. A traffic ticket is not going to correct the problem.

The other States, some are trying, some, to my knowledge, haven't shown any effort at all at this time.

Senator PERCY. Would you suggest that I write to the Governors of all of these States and certainly, send a carbon copy to the State senators, send them a copy of the hearings that we will have today and point out, particularly in my letter, the area where they need to impose stiffer penalties through the entire Midwest?

We work together: the Great Lakes States work together on a lot of things. This is a new area that possibly we need to bring to their attention.

Mr. REESE. Sir, I would greatly appreciate that if you would.

Senator PERCY. How big are the fines in other States?

Mr. REESE. I have no idea. I could not comment. In speaking with the officer from the State of Michigan in the October hazardous materials class, he was one of our students. He advised me that their penalty there was the same as a traffic ticket.

Senator PERCY. Finally, both you and I travel around Illinois quite a bit.

Mr. REESE. Yes, sir.

Senator PERCY. You are focusing on a particular problem. Could I have your comments about how people feel about these shipments and the threat that they pose? I hear again and again from constituents about their fears that major incidents could happen in their communities if we don't enforce the laws adequately, that they know of incidents happening in other communities. What do you hear from the people in cities and towns that you serve in Illinois? Do they think this is a serious problem, and do they want us to get tough with violators?

Mr. REESE. Well, the feedback——

Senator PERCY. "Us" meaning all of us.

Mr. REESE. The feedback and information that we received is well accepted by the public. However, the public is aware of what is presented to them through the news media exposure of this nature. The big item now is spent nuclear fuel.

I would much rather handle an incident involving spent fuel, because the regulations are so strenuous on this particular shipment that the chance of a problem is very minute. It is guarded, safeguarded, protected, and it is in order.

The common things we don't hear about are gasoline haulers going up and down the road, waste haulers that run around with their valves open, spilling on the roadway; gas trucks delivering to service stations with inadequate equipment on them.

If they knew that these problems would create a much greater danger to them, I'm sure the concern would be much greater than it is now. The media is very welcome to our position, and they are behind us 100 percent.

Senator PERCY. I want to express appreciation for your being here. Illinois is a transportation hub for the entire Nation. That brings jobs and prosperity to our State. It also brings some safety risks. Your job is an extremely important one. You and your colleagues are doing it very well indeed, by having a good working relationship with your colleagues, and the entire Illinois State Police force has been extraordinary.

I want to commend you. I would appreciate your passing on my commendation to your colleagues.

Mr. REESE. Thank you very much, sir.

Senator PERCY. Thank you very much, I appreciate it.

Our next panel was to have been a panel, and you are free to stay if you would like to, take a seat in the audience or see a little bit of Washington. I understand it is the first time you have actually been in the Nation's Capital. I certainly hope you have a chance to look around before you have to go back this afternoon.

Thank you very much.

[Mr. Reese's prepared statement, with attachment, follows:]

PREPARED STATEMENT OF RONALD REESE

I have been asked to appear at this hearing in order to provide you with information regarding our enforcement program for the highway transportation of hazardous materials.

The Illinois Hazardous Materials Transportation Act, Public Act 80–351, was signed into law by Governor James Thompson on August 26, 1977. This Act authorized the Illinois Department of Transportation to adopt those portions of the United States Department of Transportation Hazardous Materials Regulations that pertain to shipments by the highway mode. Those regulations were adopted by IDOT and became effective February 1, 1979.

Responsibility for the administration of the Act rests with the Illinois Department of Transportation; and the Illinois Department of Law Enforcement, Division of State Police, has the responsibility for the enforcement of regulations adopted pursuant to the Act. In order to carry out this responsibility, the Division of State Police created a 45-man Hazardous Materials Section and gave this Section the responsibility of enforcing the regulations. Due to the complexity of these regulations, it is necessary to provide these Hazardous Materials Officers with an extraordinary level of training. In order to become certified to enforce the regulations, an officer must successfully complete a 3-week Hazardous Materials Transportation Enforcement Course conducted jointly by the Illinois State Police and the Illinois Department of Transportation. In addition, each officer must successfully complete a Radioactive Materials Monitoring Course and the Radiological Defense Officers Course.

During 1983, the Hazardous Materials Section documented the following activities:

1. 10,642 Hazardous Materials Inspections conducted;
2. 1,617 Notices of Apparent Violation (NAV) issued;
3. 1,722 Warnings issued;
4. 5,0779 Hazardous Materials Violations cited;
5. 131 Hazardous Material Incident Reports completed; and
6. 188 Radiation Surveys conducted.

The facts gathered by these activities show that 3,339 vehicles (31.3 percent) were in non-compliance of the regulations. The majority of these violations occurred in:

1. Vehicle placarding;
2. Shipping papers;
3. Accessibility, blocking and bracing of the load; and
4. Required safety equipment on cargo tanks.

As of February 1, 1983, the Hazardous Materials Officers were allowed to issue warnings for minor violations of the regulations.

Each Hazardous Materials Officer has been issued special monitoring instruments which enable him to detect and monitor shipments of radioactive material that may be encountered on the highways within the state. When a radioactive material is detected with an instrument, the officer stops the vehicle in order to conduct a radiation survey. Another instrument is used to measure the radiation levels emitted from the vehicle. Measurements are taken at the surface of the vehicle, two meters away from the surface; and in the driver's seat. The individual packages are also monitored to ensure compliance with regulated radiation limits.

The original 16 instruments used for this purpose were loaned to Illinois by the U.S. Nuclear Regulatory Commission in 1977 as a pilot program to study its feasibility. In 1980, 45 instruments were purchased by the Illinois Department of Transportation for the State Police Hazardous Materials Officers.

Governor James Thompson has mandated that all shipments of spent nuclear fuel be escorted in Illinois. A Hazardous Materials Officer, in conjunction with a Department of Nuclear Safety Health Physicist, conducts a radiation survey and inspection of the vehicle prior to escorting the shipment. This program ensures that specially trained and equipped personnel are available should an emergency occur. Over 100 shipments have been handled in this manner without incident.

The recent incidents will demonstrate the effectiveness of the radiological monitoring program.

1. On the 31st day of January, 1984, Illinois State Police Hazardous Material Trooper Ronald Reese, while working truck enforcement on I–294 (the Illinois Tri-State Tollway), was alerted by the radiation monitor mounted inside the squad car.

Trooper Reese observed two trucks exiting the toll plaza, northbound on I–294, north of Cermak Road. Trooper Reese stopped the truck which was emitting the radiation and after speaking with the driver in regard to being stopped requested to see the shipping papers. Observation of the shipping papers showed no hazardous materials to be involved with the shipment. At this time, Trooper Reese, with the use of the Eberline RO–3 hand instrument located packages with radiation readings in excess of 100 MR/HR. Trooper Reese relocated the truck to the tollway maintenance facility on I–294, northbound at Touhy Avenue.

At this location, a detailed inspection and radiological survey was done on the vehicle and its contents. The Illinois State Police Hazardous Material Section Supervisor was contacted and informed of the conditions that were present and the Illinois Department of Transportation Hazardous Material Office was notified.

With information from package markings and shipping papers, the shipper was traced to the Falcon Products Company of St. Louis, Missouri. Identification of the radiation was found to be Cobolt 60 in the form of contaminated metal. The contaminated metal had been molded into table bases en route to a new restaurant in Des Plaines, Illinois.

Trooper Reese with the assistance of the Illinois Department of Nuclear Safety and the U.S. Nuclear Regulatory Commission, relocated the radioactive packages onto an exclusive use vehicle where they were returned to the shipper for proper disposal.

Inspection of the individual packages showed surface readings as high as 114 MR/HR and an outside vehicle reading of 26 MR/HR. All parties involved in the inspection were checked by the D.N.S. Health Physicist for contamination and none were found.

During the inspection, Trooper Reese wore a pocket dosimeter and the total exposure dose was 2.5 MR compared to a chest x-ray of approximately 25 MR.

2. Trooper John DeLacy on March 26, 1984, was monitoring northbound traffic on Interstate 94 at the junction with Interstate 290 (Chicago). A truck tractor, semitrailer passed his location activating the Ludlum Ratemeter alarm. The vehicle was stopped and the driver questioned about his load. The load was scrap metal and the driver knew nothing about any radioactive materials being included. The vehicle was escorted to the scrap yard and unloaded, while the Hazardous Materials Officer monitored. The Illinois Department of Nuclear Safety was also contacted and a representative responded to aid in the investigation. A total of 250 "Diluter Demand Oxygen Regulators" were found to be the source of the radioactivity. The regulators contained a radium source which would glow to indicate to a pilot of an aircraft that it was functional. Information on the regulators indicated they were used by the military, a Brookley Air Force Base, Alabama sticker was on each. The Brookley Base has not been in operation since World War II.

In order to ensure that shipments of hazardous materials are transported in a safe manner and that the public is adequately protected, the Section is being increased by an additional twenty-five (25) Officers over the next 18 months and current officers are attending emergency response schools. The Department of Law Enforcement continually provides high levels of training and dedication to the Hazardous Materials Enforcement Program.

The opportunity to appear here today is appreciated and we sincerely hope that our comments will be of assistance to you.

Thank you.

Senator PERCY. I had asked the U.S. Customs Service to send a witness to this hearing to answer questions I have about how this shipment arrived in the United States undetected and whether this kind of dangerous incident will ever happen again. I regret that after originally agreeing to testify, Mr. Alfred DeAngelus is now declining to appear.

[A letter from Mr. DeAngelus follows:]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, May 9, 1984.

Hon. CHARLES H. PERCY,
Chairman, Committee on Governmental Affairs, Subcommittee on Energy, Nuclear Proliferation, and Government Processes, Washington, DC.

DEAR MR. CHAIRMAN: Thank you for your letter of May 8, 1984, inviting me to appear as a witness before the Subcommittee on Energy, Nuclear Proliferation, and Government Processes hearing concerning transportation of hazardous materials scheduled for 10:00 am, May 9, 1984.

I apologize for being unable to appear as a witness before your Committee, due to Customs inability to prepare and clear testimony through the various appropriate channels prior to your hearing.

Please be advised that my inability to appear is solely due to Customs—although we are now in the process of reviewing draft testimony we have yet to forward approved copies to Treasury or the Office of Management and Budget for review or comment. I understand, however, that much of the information which is of interest to the Committee is included in my letter of May 8, 1984, to you.

Again, knowing of your strong personal interest in this matter, allow me to apologize for being unable to appear today. We would be delighted to appear at a later date before your Committee or arrange to brief you or your staff more fully concerning these matters at a time convenient to you.

Yours faithfully,

ALFRED R. DEANGELUS,
Deputy Commissioner.

Senator PERCY. Mr. DeAngelus did provide a written statement.[1] I do want to get to the bottom of this matter. However, it does appear that the Customs Service is taking steps to correct the problem.

Let me insert into the record a letter that I received just yesterday from the Commissioner of Customs.

[The letter referred to follows:]

THE COMMISSIONER OF CUSTOMS,
Washington, DC, May 8, 1984.

Hon. CHARLES H. PERCY,
U.S. Senate, Washington, DC.

DEAR SENATOR PERCY: This letter is in response to your staff's request that we provide you with information relative to the importation of contaminated steel products which entered through the Port of El Paso.

A shipment of steel concrete reinforcing bars (rebar) imported from Mexico through the Port of El Paso was found to be radioactive by personnel at the University of California, Los Alamos National Laboratory in New Mexico on January 17, 1984.

Subsequent investigation disclosed that a cylinder containing pellets of cobalt 60, which were to be used in a teletherapy unit, was taken from a warehouse in Juarez, Mexico. The radioactive material was sold to a scrapyard in Juarez, and later commingled with other scrap metal. The scrap metal was produced into steel products, primarily rebar. Some of the steel was imported into the U.S. during December and January, in the form of rebar and metal table legs. Only portions of the steel produced by the Mexican factory were contaminated. Shipments which had entered the U.S. commerce were detected in Texas, Illinois, New Mexico, Arizona, Colorado, Oklahoma and California.

Because of your interest and recommendations concerning this serious matter, the U.S. Customs Service, working with the Texas Health Department, the Nuclear Regulatory Commission (NRC), and Mexican officials, has extensively researched import records and conducted exhaustive interviews of involved parties.

[1] See p. 137.

A majority of the contaminated products that we know entered this country have been located and either returned to Mexico or are awaiting return. Mexican officials have additional work to do but they confirmed that final clean-up efforts in Mexico are proceeding according to plan. Mexican officials will keep the appropriate officials in the U.S. apprised of the clean-up progress.

As a result of meetings with representatives from your staff, the NRC plans to purchase radioactivity detection devices for ports along the U.S./Mexican border. All of the targeted ports process commercial cargo transactions. At your request, representatives from the NRC, Customs, and Texas Health Department will perform an analysis beginning on May 8, 1984, to determine which types of detection devices will be required. This analysis and the resulting procedures are to assure that unauthorized radioactive materials containing cobalt 60 are not introduced into the U.S. The U.S. Customs Service is assisting in this study and will act upon NRC's recommendations. Customs has instituted procedures in the use of currently available Geiger counters and contingency plans are in effect to obtain the immediate assistance of state health officials as necessary.

The most recent meeting to assess the status of the effort and to review plans to avoid future incidents was conducted on April 30 and May 1, 1984. The meeting involved Federal representatives from the U.S. and Mexico and State officials from California, Arizona, New Mexico and Texas.

The Customs Service would like to express its sincere appreciation to you for your support and active participation in this matter. Your interest has spurred the procurement of radioactivity detection devices and resultant border improvements.

Thank you for the opportunity to comment on this important matter and we will continue to keep you apprised of any further developments.

If I can be of further assistance, please call me.

Yours faithfully,

ALFRED R. DEANGELUS.

Senator PERCY. We therefore, will turn to and ask Mr. James Taylor, Deputy Director of Inspection and Enforcement for the Nuclear Regulatory Commission, who is the second member of this panel, to join us today.

Mr. Taylor, we would be happy to have you identify the colleagues you have with you, and proceed with your testimony.

TESTIMONY OF JAMES M. TAYLOR, DEPUTY DIRECTOR, OFFICE OF INSPECTION AND ENFORCEMENT, U.S. NUCLEAR REGULATORY COMMISSION, ACCOMPANIED BY JAMES LIEBERMAN, OFFICE OF THE EXECUTIVE LEGAL DIRECTOR; RICHARD CUNNINGHAM, HEAD, DIVISION OF FUEL CYCLE AND MATERIALS SAFETY; JAMES PARTLOW, OFFICE OF INSPECTION AND ENFORCEMENT; JOSEPH LAFLEUR, HEAD, OFFICE OF INTERNATIONAL PROGRAMS; AND DARREL WIEDEMAN, REGION III

Mr. TAYLOR. Good morning, Mr. Chairman. My name is James M. Taylor. I am the Deputy Director of the Nuclear Regulatory Commission's Office of Inspection and Enforcement. With me on my left are Mr. James Lieberman who is from our Office of the Executive Legal Director, and he assists in providing guidance to our office, legal advice on the subject of enforcement. Also with me to my immediate right is Mr. Richard Cunningham, who heads the Division of Fuel Cycle Materials Safety and is from one of our major offices in the NRC.

With him to his right is Mr. James Partlow, who is with the Office of Inspection and Enforcement and closely followed the activities of the contaminated Mexican steel. On the end is Mr. Joseph Lafleur,

who is head of our Office of International Programs, and he is with us today because of the involvement of Mexico in this particular matter. We will be prepared to answer questions.

I have a very brief opening discussion which I think may help to focus on the situations that you are reviewing.

With your permission, I would like to submit for the record a prepared detailed statement summarizing the NRC's inspection and enforcement activities relating to radioactive materials transportation, the subject of your hearings, or this portion of your hearings.

My statement highlights the major changes in emphasis that has occurred over the past few years in the NRC inspection and enforcement program for nuclear transportation activities of NRC licensees. Wo do a great deal of inspection of radioactive materials shipments, particularly at the points of origin as part of our job of protecting public health and safety, and we have increased, in the past few years, the last 4 or 5 years, by changes in our regulations, our activities in that area.

My statement, my formal statement also describes those portions, in some detail, of our enforcement policy which apply to transportation. Generally speaking, the NRC enforcement policy recognizes that our requirements have varying degrees of safety or safeguards of environmental significance in all the activities regulated by the NRC.

Our enforcement, which covers everything from operating reactors to radiopharmaceutical shipments, categorizes violations in terms of five levels of severity to indicate their relative importance within eight major activity areas that are licensed and regulated by the NRC.

Within the area of transportation, monetary civil penalties may be imposed and are imposed for violations considered to be of significant or having significant regulatory concern. For your convenience, I have attached to my prepared statement a civil penalty table, as well as a summary of civil penalties issued by the NRC for transportation violations during the period of January 1982 to December 1983.

Because of your interest in and concern about the cobalt 60 contaminated steel incident, I am going to provide a few details as background which may assist in any further questioning.

Back in 1977, a U.S. firm exported a teletherapy unit to a hospital in Juarez, Mexico. The hospital never used this teletherapy unit. Instead, the hospital in Mexico stored it in a warehouse. At the time of export of this unit to Mexico, the cobalt 60 source in the unit contained over 1,000 curies of radioactivity.

On or about December 6, 1983, the teletherapy unit was disassembled, and the metal was sold as scrap to a dealer in Juarez, Mexico. In the process, the source was ruptured, allowing release of 6,000 pellets of radioactive cobalt 60, which are so small, they are only about 1 millimeter in diameter.

The radioactive pellets contaminated the truck which carried the scrap to the scrap dealer, the scrap itself, and ultimately, the dealer's entire scrapyard portions of the scrapyard.

Subsequently, without realizing the existence of radioactive contamination that was present, the scrap dealer sold the cobalt 60 contaminated scrap to two foundries in Juarez, and a third foundry in Chihuahua, Mexico. The foundries, without any knowledge that we know of the radioactivity problem, exported contaminated steel prod-

ucts into the United States in the form of reenforcing bars, commonly called rebar, steel and cast pedestals for tables to be used in restaurants and hotels.

The first sign of this came by chance when a truckload of contaminated rebar was detected by radiation monitors at the Los Alamos National Laboratory in Los Alamo, NM. As the result of inquiries to the shipper and distributors of the rebar, the origin of the material was identified, the Mexican safety authorities were notified under international programs of the contamination program, and they promptly stopped further shipments into the United States.

The Mexican authorities also located the source of the contamination, made radiation surveys to determine magnitude of the problem, and took steps to isolate the contamination and the contaminated materials. In the meantime, within the United States, an extensive cooperative effort was mounted among the NRC, the States potentially involved, the Customs Service, and other agencies.

U.S. Customs began monitoring shipments of steel at the principal commercial entry in that area of Mexico, which is at the city of El Paso, right across from Juarez, Mexico. Later, this monitoring effort was expanded to include all traffic at the three main points of entry into the El Paso area. Within the United States, contaminated rebar was found in four States. This was found with the assistance of the State authorities. Generally, the truckloads of rebar had radiation levels of about 10 to 15 MR per hour, with a maximum reading on one truck of 600 MR per hour.

Initially, Falcon Products, which was the recipient of the cast table legs, indicated that the potentially contaminated legs were all stored in a warehouse or in their warehouse at St. Louis. It was with the help of people like the State trooper who just testified that it was determined that, indeed, shipments had been made, and the tables with contaminated pedestals were located subsequently in 40 States.

Contact radiation readings on the pedestals ranged from 25 microrem per hour to a few millirem per hour, with the maximum reading found of 375 millirem per hour. At the time the studies were made, most of the tables were still stored in the warehouses. Only a relatively few had reached the ultimate location of use in restaurants and hotels. Ground and area surveys of El Paso and the vicinity indicated that no cobalt 60, these little particles from the damaged source, had been tracked across the border.

The foundaries in Mexico had been decontaminated and are apparently again operational. According to Mexican officials, the junkyard has been decontaminated, and the contaminated material has been moved to a temporary storage area outside of Juarez.

The four to five Mexican people who were immediately exposed to the high level source particles, and who received exposures, continue to get better, and I understand all have normal blood levels at this time.

Essentially, all the tables made by Falcon Products have been located, surveyed, and returned to Mexico. Also, most of the rebar has been returned to Mexico at this time for disposal or for other uses where radiation levels are not considered to be a problem by the Mexican Government.

We are prepared to answer questions, Mr. Chairman, and we will proceed.

Senator PERCY. Thank you very much, indeed. Your full testimony will be incorporated in the record.

The questions that I would have put to him would have pertained to our judgment that hundreds of Mexicans were exposed to high levels of cobalt radiation, thousands of Americans could have been exposed to lower but still very serious levels of radiation if these shipments had not been detected, and we will seek assurance from Customs Division that no more illegal, unmarked, radioactive shipments of this kind will be permitted in the country if we can possibly intercept them and detect them, and I know we will have the cooperation of the Mexican Government.

I have worked closely with the Mexican Government on problems as chairman. The Mexican-United States delegation has met for 24 years. I haven't met every year for 24 years with them, but I have for the last 10, and their President will be there. We are hosting him at a luncheon, I believe, next week. I will discuss this matter with him and his colleagues during the course of that luncheon.

Mr. Taylor, I would like to ask you about the shipment, also, now, the radioactive tables from Mexico. Under Federal law, who is liable for a shipment of this kind?

Mr. TAYLOR. I will ask Mr. Lieberman, who is our counsel, to answer that question, sir, if you don't mind.

Senator PERCY. Thank you.

Mr. LIEBERMAN. On the point of liability, money damages, that is a matter not covered by Federal law. From the point of view of regulatory violations, shipment of material within the United States is covered by the regulations of the Department of Transportation and the regulations of the Nuclear Regulatory Commission. In this particular case, violations could have been caused by carriers and shippers, and they would be responsible parties for complying under Federal law.

Under this particular case, they appear not to have had knowledge of the particular violations, and we have not yet considered to take regulatory action against any of the parties.

Senator PERCY. Could you clarify who in the United States in your judgment is responsible for guaranteeing the safety of shipments of this kind?

Mr. LIEBERMAN. From the point of view of the Federal Government?

Senator PERCY. Yes, that is right. Where does the buck stop? Who is responsible? Or is it in the private sector, shippers, fabricators? Whoever it may be.

Mr. LIEBERMAN. Within the Federal structure, both the Department of Transportation and the Nuclear Regulatory Commission have concurrent jurisdiction in the area of transportation. They both have regulations and the NRC has adopted the DOT regulations. Generally, the shipper or the carrier is responsible for compliance with the requirements. I think that answers your question.

Senator PERCY. Let me go back to Trooper Reese's testimony. He testified that the shipment occurred after the shipper knew of the risk. In your judgment, is this true?

Mr. LIEBERMAN. I do not know the actual facts of the case, Senator, but if that is what occurred, the shipper may have had responsibility, in this case, to assure that proper labeling and control of the material occurred.

Senator PERCY. I understand that no violations or penalties have been proposed. Is this correct?

Mr. TAYLOR. That's correct to this point. To the best, I believe, to the best of our knowledge, the fact that radioactive material was involved here was unknown to the officials at Falcon Products, and any movement thereof was unwitting on their part. We have with us a member of our staff from region III, Mr. Darrel Wiedeman. He worked directly with Falcon Products. Perhaps I can ask him to come up and address that.

Senator PERCY. All right. Let me put it in perspective. Trooper Reese told the committee that had the case not been handed over to the NRC by the State of Illinois, he is convinced that tough penalties would have been imposed. I would ask the question, Were no laws broken in this case?

Mr. WIEDEMAN. Senator, I think I can answer that question.

Falcon Products was not aware at the time. When I notified them on January 25 that we had received a report that there may be some radioactive contamination of their products, we asked them to immediately cease distribution of the products until we could investigate the matter, and at the time I had made arrangements with the State of Missouri, Department of Public Health, to go out to the St. Louis facility and do a survey for which, in the meantime, I had made arrangements, and they were waiting around the corner.

I gave them a call, and they were there at about 8:30 that morning. They did the survey. They called me at about 9 o'clock on January 25. They said, indeed, they were radioactive contaminated bases.

I talked to the president of the company, and he verbally agreed to cease distribution of all of his products until he could investigate the matter. We gave him the names of four nuclear consultants, from which he hired a nuclear consultant by the name of Eli Port out of Evanston, IL, known as Radiation Protection Services. Mr. Port was dispatched immediately to the site in St. Louis. Going back to the shipment that occurred on January 31, that particular shipment was sent out of St. Louis on January 13, according to our review of the shipment papers.

The president of the company felt 99.9 percent positive that all of the contaminated bases were still in storage at their St. Louis facility.

Senator PERCY. Let me just put it in terms of how people in Illinois would understand it and the assurance that they would really ask for. How sure are we that all these shipments have been found and people in Illinois and other States rest assured that none of these shipments reached a destination undetected? In other words, can people rest easy the next time they go to a restaurant in northern Illinois that they won't be sitting at a radioactive table?

Mr. WIEDEMEN. I believe you can assure them of that, because No. 1, we met with the president of the company, and he supplied us with a complete computer readout of every distribution of this product. Originally, we were unaware of the date this meltdown occurred. We finally met with the supervisor of the Juarez foundry. He made a

statement that he was somewhat positive that the meltdown occurred on or around December 9 or 10. So the NRC wanted to take the conservative approach. So we asked for a listing of all of his customers in, I believe around November 9, 1983, up to the time I notified them, January 25, 1984.

NRC sent out a letter on February 7, 1984, to every State in the Union describing the problem. We even gave them guidance on how to perform the surveys and how to identify the tables. We did a closeout inspection of the St. Louis facility on March 25. At that time, it shows that there were approximately 40 States involved.

There were only seven States left where a few tables remained.

We set a priority of picking up the highest readings first.

Senator PERCY. Thank you.

Let me ask you about NRC's overall enforcement and their program. I take it that you are familiar with the Congressional Research Service report. This report is dated March 15, 1984.

Mr. TAYLOR. I just saw a copy of it, yes, sir, yesterday. I haven't had time to study it.

Senator PERCY. The Congressional Research Service is critical of the small size of the penalties the NRC has imposed for transportation violations. From January 1980 through March 1981, the NRC noted 25 violations. These violations involve unlawful radiation levels; failure to use adequate packaging; failure to secure packages and an assortment of other matters, some of which were quite serious. The average penalty was just $2,740. From January 1982 to mid-February 1984, a considerably longer period, the NRC noted only five violations.

Each was subject to a statutory maximum of $100,000 per violation per day, yet the average penalty imposed was just $1,970, less than 2 percent of the statutory maximum. Why was this? In the District of Columbia, I have never experienced, members of my family have never experienced this on traffic violations, the District of Columbia Police going that small with a percentage of the maximum allowance. They generally seem to go the maximum.

Mr. TAYLOR. Senator, in the transportation area, our civil penalties and monetary fines are based upon the quantities of radioactive material. For larger quantities of radioactive material, we have the ability to go to the higher levels of civil penalties. So it is partly based upon the quantities of radioactivity material involved in the particular shipments, and there are types of readings, the types of isotopes that are involved in transportation.

Second, our enforcement is not just based on civil penalties. We have, within our enforcement capability, which is applied to our licensees who do ship radioactive materials, we have a stronger enforcement capability of issuing orders, which, in the particular cases that we have talked about, the circumstances did not dictate issuing orders. But we have, where people handled radioactive materials and may be careless at the facilities of this type that is most frequently shipped, we have issued orders.

These orders can constitute actions which are quite costly. So there is a whole span of the ability to level enforcement depending upon the threat to the public health and safety.

In most of the cases in transportation, the violations did not pose any severe threat to the public health and safety. That is principally the basis of decision.

We have, within our staff, the kind of people who make those determinations. That is really the basis. Jim Lieberman, would you like to add to that?

Mr. LIEBERMAN. That covers it.

Senator PERCY. We are all familiar with the out-of-State, out-of-court settlement that was made just a couple of days ago in the agent orange situation. It was a very, very substantial settlement, multimillions of dollars set aside for the purpose of settlements.

Let me ask you, in contrast to that, about the most serious of these five cases, the one with the largest penalty and the one noted by the NRC as severity level 1 and 2. Two violations were cited, so the statutory maximum penalty was $200,000. In that case, $3,600 was imposed, hardly a penalty when it can be written off; the Government pays half of it, approximately.

I don't imagine that cost is tax exempt, so it is a pittance, it is nothing. It is no penalty at all. It cost the Government far more money to prosecute the case than we ever got back in a penalty.

In this case, the Nuclear New England Corp. had a radioactive shipment that leaked on a public highway. The package had been improperly packaged. For this, the company was fined $200,000. The company waited a full day before notifying the NRC that a leak had occurred, a direct violation, flagrant violation. In the meantime, a clear danger to public safety existed.

For this violation, the company was fined $1,600. Mr. Taylor, do you and your colleagues at NRC think this is what the Congress had in mind when it set $100,000 in maximum penalties? Here we had an actual leak which a company failed to report immediately. Highways were contaminated, and the NRC imposed just 2 percent of the maximum. Do you really think that is a penalty? What kind of a game is this that we are playing with these guys. I'm an industrialist. I'm a businessman, and I'm enraged at that kind of regulation. What is the reason for this? I would call that a sweetheart kind of an operation if I ever heard of one.

Mr. TAYLOR. That was not, I don't believe, intended to be a sweetheart operation, Senator.

Senator PERCY. How do you interpret a $1,600 fine?

Mr. TAYLOR. May I explain that in that particular shipment, the highest level of radiation that was detected outside of the container, and this was surface contamination, was approximately 1 R or 1 Rem per hour. In order to have lethal physical effect, a person would have to be exposed to something in the area of 400 to 500 R per hour. One R per hour was the radiation level just on the outside of the shipment. That was partly the technical basis upon which the level, the degree of the monetary penalty was imposed—the potential impact on the public health and safety. I was not—Mr. Lieberman, I believe, was directly involved in that particular case.

Jim, would you like to add to that technical side of the explanation?

Mr. LIEBERMAN. I would add that in this case, while the company did report to us late; we were disturbed that they reported it late; they did report it to us. We consider it is important to have licensees identify problems to us, because we just don't have enough inspectors to be at all licensees' facilities at any given time. Therefore, in taking enforcement action, we considered that as an important element,

whether the licensees identified the problem to us before we discovered it. That doesn't excuse the failure to report it within the 1-hour time required they report it, but that was a factor to be considered.

Senator PERCY. Just looking at this particular case, we know there are many serious injuries in Mexico. Put the case in perspective, then, so far as the United States is concerned. To your knowledge, in the continent of North America, has there ever been as large a leak of radioactive material as this one, has there ever been a leak which caused as many injuries or which posed as wide a threat to public health?

Mr. TAYLOR. Senator, I'm not aware, and I will ask Dick Cunningham, again, who has been in the area of licensing of byproduct material usage and has been with us a number of years, to answer that question.

Dick, I don't believe we have had anything quite like the incident that occurred in Juarez. Can you provide more on that?

Mr. CUNNINGHAM. Senator Percy, I think the incident in Juarez was unique. It involved more widespread contamination than has occurred in the past, although there have been incidents in the past where contaminated or radioactive materials have been introduced into the public domain and discovered only after they had been introduced.

So far as radiation injury is concerned, I think that the distribution of materials and the levels of radiation in the materials that were imported into the United States was sufficiently low that there would be no observable injury on anybody that came into contact with these materials. The situation in the United States is quite different than it was for a few people in Mexico that were exposed to the cobalt 60 pellets themselves.

Senator PERCY. If, Mr. Taylor, your investigation demonstrates that the companies shipping the radioactive tables knew or at least should have known of this risk, would you and will you impose a penalty of more than 2 percent of the statutory maximum?

Mr. TAYLOR. Again, sir, I will ask Mr. Lieberman to comment on that. I believe that if they knew, then we would have to ask for the assistance of the Department of Justice in that particular type of problem. Since he, of course, was not a licensee of the NRC, and was not licensed to have radioactive material, it represents somewhat of a unique situation. With Justice's assistance, we would probably proceed to do something about it. But that is about as much as I could speculate. Jim?

Mr. LIEBERMAN. I can answer that.

A person does not need to be a licensee of the Nuclear Regulatory Commission to receive a civil penalty from the Commission. If a person should have been a licensee, if a person has material in his possession and doesn't seek a license but should have sought a license, they can still receive a civil penalty. If a person willfully commits violations and fails to get a license or to comply with the license conditions, we can increase civil penalties, and, in fact, we do, beyond the base amounts shown in the table. To answer your specific question, if a shipper deliberately failed to comply with the Commission requirements, we would increase the civil penalty beyond the amounts in the table.

Mr. Taylor also referred to the Department of Justice. The deliberate violation of the Commission requirements is a potential criminal act, and we are required to refer all deliberate violations of requirements to the Department of Justice for their consideration.

Senator PERCY. I would like very much and appreciate, Mr. Taylor, hearing back from you in a reasonable period of time as to some proposals that we could have for a new civil penalty program. Would 60 days be adequate to hear back from you on that?

Mr. TAYLOR. Yes, sir. I think we could provide you an answer in 60 days.

Senator PERCY. Fine.

If you aren't sure about penalties in the radioactive tables case, if the number of violations you identified are down by 80 percent over the past 2 years and if you can only impose 2 percent of the statutory maximum in the case which the NRC itself calls severity level 1, then I would think some changes need to be made. If we can hear back from you in 60 days on that, we would very much appreciate that.

Mr. TAYLOR. Yes, sir.

Senator PERCY. I thank you all for being with us. I appreciate your appearance today.

[A letter from the U.S. Nuclear Regulatory Commission, and Mr. Taylor's prepared statement, with attachments, follow:]

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

JUN 27 1984

The Honorable Charles H. Percy, Chairman
Subcommittee on Energy, Nuclear Proliferation
and Government Processes
Committee on Governmental Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

On May 9, 1984 several senior NRC staff testified to the Subcommittee on Energy, Nuclear Proliferation and Government Processes of the Senate Committee on Governmental Affairs. At the conclusion of the testimony you requested that the NRC provide recommendations for improving the NRC Enforcement Policy as it relates to the transportation of radioactive materials. For the reasons discussed below, I do not believe any changes to the policy should be made at this time. The Commission is considering initiation of a study of the NRC Enforcement Policy which would include its civil penalty policies. A copy of that study will be provided to you when it is completed.

The NRC Enforcement Policy recognizes that the NRC's requirements have varying degrees of safety, safeguards, or environmental significance. For this reason, the policy requires the identification of the relative significance of each violation as an initial step in the enforcement process. Violations of NRC requirements are categorized in terms of five levels of severity to indicate their relative level of significance within each of eight activity areas - reactor operations, facility construction, safeguards, health physics, transportation, fuel cycle and materials operations, miscellaneous matters, and emergency preparedness. Within each activity area, Severity Level I is assigned to violations that are the most significant and Severity Level V to violations that are the least significant.

The relative seriousness of violations in each severity level applies only within each activity area. Comparisons of the same severity level between activity areas, such as transportation and operating reactors, are inappropriate. For example, the severity or potential severity of any hazard to the public associated with Severity Level I violations in reactor operations is significantly greater than that associated with Severity Level I violations in transportation. Because of this, different levels of penalties are imposed for the different activity areas and the classes of licensees as shown in Table 1A of the Enforcement Policy (Enclosure). The structure of Tables 1A and 1B in the Policy generally take into account the gravity of the violation as a primary consideration and the ability to pay as a secondary consideration. Generally, operations involving greater nuclear material inventories and greater potential consequences to the health and safety of the public receive higher civil penalties.

The amounts in the civil penalty tables are only guidance regarding how much of a penalty will normally be proposed under certain circumstances. However, in cases where a serious breakdown in management control or severe violations

are identified, the Policy provides that the NRC may apply the full range of its enforcement authority, including issuing appropriate orders and assessing civil penalties. In such cases, civil penalties may be assessed up to the statutory limit of $100,000 per violation and for continuing violations up to that amount on a per day basis.

As noted in Table 1A of the Policy, the base civil penalties for most transportation violations are $5,000 or less. Only for violations at reactors or fuel fabricators and industrial processors involving greater than Type A quantities* are the base civil penalties greater than $5,000. The reason the base civil penalties for transportation violations are usually $5,000 or less is based on the potential health and safety significance of transportation violations as contrasted with the potential health and safety significance of other violations. Experience has shown that Severity Level I violations involving Type A quantities or less do not generally pose a significant health and safety concern. This is primarily because the type, quantity, and form of radioactive material in the packages being transported are limited by regulations. As the type, quantity, and form of radioactive material in packages becomes larger, the packages are required to meet increasingly more stringent standards, and the penalties for violations of these regulations increase accordingly. Of course, as noted above, the base civil penalties are only guidance and if particularly significant violations are identified the NRC may, in its discretion, exercise its full statutory authority of up to $100,000 per violation per day.

In the New England Nuclear case which was discussed at the hearing on May 9, 1984, a significant health and safety incident did not result because of the type, form, and quantity of radioactive material. The radioactive material involved was, fortunately, low specific activity material (i.e., a limited concentration of radioactivity), the radioactive material was phosphorus-32 which has a short half-life (14 days), and the amount of radioactive material estimated to have been spilled on the road was 172 to 262 millicuries. Nevertheless, it was of significant regulatory concern and a civil penalty was issued because if the violation had involved other radioactive material, significant health and safety consequences could have occurred.

As a result of the New England Nuclear case and other enforcement cases, on March 8, 1984 when the NRC Enforcement Policy was revised, revisions were made to the base civil penalties in Table 1A. One of the changes in Table 1A was to increase from $2,000 to $5,000 the base civil penalty for violations involving transportation of Type A quantities or less. As a result, if the civil penalty for the New England Nuclear case were imposed today it would be $9,000 instead of $3,600 paid by New England Nuclear. This is a 250 percent increase in the amount of the civil penalty.

As discussed in the submitted written testimony, the NRC has shifted from the inspection of completed shipments at their destination to the systematic

*/ Type A quantities are specified amounts of radioactive material which can be transported in Type A packages. Type A packages are designed to retain their integrity and the containment of their radioactive material under normal conditions of transportation. A list of the quantities of isotopes that may be transported in a Type A package is set forth in 10 CFR 71, Appendix A.

inspection of licensees' procedures and programs for transportation activities at the point of origin. This is because the three states with burial sites have established strong programs for conducting their own inspections of shipments as they are received. Thus, most NRC inspections now focus on an examination by the inspector of the shipper's packaging and quality assurance procedures before the actual transportation, as well as an examination of past shipment records. The three States with burial sites have also adopted enforcement programs under which action is usually taken as soon as a violation is discovered. This has proven to be an effective means of keeping the waste generators alert to the need for continued compliance.

As a result of the increased Federal and state efforts, the number of radioactive materials transportation violations that have been noted in shipments has decreased significantly. In its report of its radioactive materials transport surveillance program for the FY 1981 period, the State of South Carolina noted that discrepancies were noted in only 160 shipments (less than 4 percent) of the 4742 incoming shipments to Barnwell. Of those 160 shipments, only 10 (0.21%) were of sufficient severity to merit the assessment of a penalty. Also, in FY 1981 South Carolina levied a total of $19,500 in civil penalties, and ordered several suspensions of user privileges. In its report, South Carolina noted that "The most significant hazard during the 1981 study year continued to be the poor mechanical conditions of some transport vehicles." In its conclusions, several recommendations were made regarding improvements in compliance with the motor carrier safety regulations. The other two states with burial sites (Nevada and Washington) had results similar to South Carolina.

After reexamining the NRC Enforcement Policy in the transportation area, including the changes in the revision of March 8, 1984, the NRC does not believe that any further changes are warranted at this time. The Enforcement Policy has adequate sanctions and flexibility for taking prompt and effective action in matters requiring timely NRC action while still encouraging improvements by licensees.

Sincerely,

JWFoe for

William J. Dircks
Executive Director for Operations

Enclosure: As stated

ENCLOSURE

TABLE 1A
BASE CIVIL PENALTIES

	Plant Oper, Const, Health Physics and EP	Safeguards	Transportation: Greater than Type A Quantity 1/	Transportation: Type A Quantity or less 2/
a. Power Reactors	$100,000	$100,000	$100,000	$5,000
b. Test Reactors	10,000	10,000	10,000	2,000
c. Research Reactors & Critical Facilities	5,000	5,000	5,000	1,000
d. Fuel Fabricators and Industrial Processors 3/	25,000	100,000 4/	25,000	5,000
e. Mills and Uranium Conversion Facilities	10,000	--	5,000	2,000
f. Industrial Users of Material 5/	10,000	--	5,000	2,000
g. Waste Disposal Licensees	10,000	--	5,000	2,000
h. Academic or Medical Institutions 6/	5,000	--	2,500	1,000
i. Other Material Licensees	1,000	--	2,500	1,000

1/ Includes irradiated fuel, high level waste, unirradiated fissile material, and any other quantities requiring Type B packaging.

2/ Includes low specific activity waste (LSA), low level waste, Type A packages, and excepted quantities and articles.

3/ Large firms engaged in manufacturing or distribution of byproduct, source, or special nuclear material.

4/ This amount refers to Category 1 licensees (as defined in 10 CFR 73.2 (bb)). Licensed fuel fabricators not authorized to possess Category 1 material have a base penalty amount of $50,000.

5/ Includes industrial radiographers, nuclear pharmacies, and other industrial users.

6/ This applies to nonprofit institutions not otherwise categorized under sections "a" through "g" in this table.

TABLE 1B

BASE CIVIL PENALTIES

SEVERITY LEVEL	BASE CIVIL PENALTY AMOUNT (% of Amount Listed in Table 1A)
I	100%
II	80%
III	50%
IV	15%
V	5%

PREPARED STATEMENT OF JAMES M. TAYLOR

Mr. Chairman, my name is James M. Taylor. I am the Deputy Director of the Nuclear Regulatory Commission's Office of Inspection and Enforcement. On behalf of the Commission, I would like to thank you for this opportunity to appear before the Subcommittee.

With your permission, I would like to submit for the record a prepared statement summarizing the NRC's inspection and enforcement activities relating to radioactive materials transportation. My statement highlights the major changes in emphasis over the years in the NRC inspection and enforcement program for nuclear transportation activities of NRC licensees.

My statement also describes those portions of the NRC's Enforcement Policy which apply to licensees' transportation activities. Generally speaking, the Enforcement Policy recognizes that NRC requirements have varying degrees of safety, safeguards, or environmental significance. Violations are categorized in terms of five levels of severity to indicate their relative importance within each of eight activity areas.

Within the area of transportation, monetary civil penalties may be imposed for violations considered to be of significant or very significant regulatory concern. For your convenience, I have attached to my prepared remarks a base civil penalty table as well as a summary of the civil penalties issued by the NRC for transportation violations during the period from January 1982 to December 1983.

Mr. Chairman, I would be pleased at this time to answer any questions you may have with respect to the NRC's transportation inspection and enforcement program. I am also prepared to answer questions regarding the Commission's role in responding to the problems created by the recent distribution of restaurant table pedestals containing radioactive metal imported from Mexico.

THE NRC INSPECTION/ENFORCEMENT PROGRAM FOR RADIOACTIVE MATERIALS TRANSPORTATION

Prior to 1979, the NRC's program for the inspection and enforcement of the transportation activities of its licensees could have been characterized as modest. The program was limited because NRC's nuclear transport regulations in 10 CFR Part 71, in accordance with agreements with the Department of Transportation, were not directed to low level waste shipments, but rather to design approvals for packages for Type B and fissile materials. In effect, NRC requirements did not apply directly to most low-level waste shipments, or to packages of lesser activity such as radiopharmaceuticals, which comprise the largest portion of radioactive materials shipments.

In December 1979, this situation changed and NRC's overall involvement increased in inspection/enforcement of nuclear transportation activities of its licensees. In response to expressions of serious concern by the Governors of South Carolina, Nevada, and Washington involving widespread noncompliance with DOT transport rules and insufficient inspection and enforcement, the NRC made commitments in an action plan to upgrade the quality of compliance by its licensees with the DOT requirements for safe transport of low-level nuclear wastes, as well as other types of shipments. This action plan included the following:

- Adopt regulatory changes to impose on NRC licensees all DOT shipper requirements and to enforce those requirements (completed December 3, 1979, 10 CFR 71.5).

- Issue Bulletins to all waste generators/shippers warning of the need to upgrade their waste transport programs.

- Issue Information Notices to inform/educate waste generators/shippers of regulatory requirements.

- Increase the inspection program of waste generators/shippers at the point of origin.

- Dispatch inspectors to burial sites to inspect incoming shipments.

- Issue guidelines for enforcement and adopt an aggressive program for imposition of civil penalties for violations.

Each of these items have been completed.

The final item in the action plan resulted in the issuance on December 31, 1979, of a supplement to NRC's existing enforcement criteria and provided guidelines for determining enforcement sanctions for violations involving transportation. The essential elements of this supplement were later incorporated into the NRC's General Statement of Policy and Procedure for Enforcement Actions, first published for comment on October 7, 1980 (45 FR 66754), subsequently published in final form on March 9, 1982 (47 FR 9987), and revised on March 8, 1984 (49 FR 8583).

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The Enforcement Policy recognizes that the NRC's requirements have varying degrees of safety, safeguards, or environmental significance. For this reason, the policy requires the identification of the relative importance of each violation as an initial step of the enforcement process. Violations of NRC requirements are categorized in terms of the five levels of severity to indicate their relative level of importance within each of eight activity areas. One of these areas is transportation. Within each activity area, Severity Level I has been assigned to violations that are the most significant and Severity Level V to violations that are the least significant. Severity Level I and II violations are of very significant regulatory concern. In general, violations that are included in these severity categories involve actual or highly probable adverse impacts on the public. Severity Level III violations are cause for significant concern. Severity Level IV violations are less serious but are of more than minor concern: i.e., if left uncorrected, they could lead to a more serious concern. Severity Level V violations are of minor safety or environmental concern.

The relative seriousness of violations at the several severity levels applies within each activity area, but comparisons between activity areas, such as transportation and operating reactors, are inappropriate. For example, while the immediacy of any hazard to the public associated with Severity Level I violations in Reactor Operations is greater than that associated with Severity Level I violations in Transportation, both areas have violations which cover the full range of severity levels. This disparity in relative seriousness of violations in different activity areas is due to the diversity of licensed activities regulated by NRC.

Generally, monetary civil penalties are imposed for Severity Level I and II violations and are considered for Severity Level III violations. In June 1980, the NRC's statutory authority for civil penalties was increased from $5000 per violation per day to $100,000 per violation per day and the $25,000 limit on violations in a 30-day period was removed. The policy contains a base civil penalty table which takes into account the types of licensees involved and the activity areas. A copy of that table is attached. (Enclosure 1)

Between late 1979 and mid-1981 the NRC issued 18 civil penalty enforcement actions involving transportation. Most of these enforcement actions originated during burial site inspections of incoming NRC-licensee shipments.

Emphasis on inspections by NRC has now shifted from the inspection of completed shipments at their destination to the systematic inspection of licensees' procedures and programs for transportation activities at the point of origin. Thus, most inspections now focus on examination by the inspector of the shipper's packaging and quality assurance procedures before the actual transportation, as well as an examination of past shipment records. From January 1982 to December 1983, NRC issued nine civil penalties for transportation violations, as summarized in Enclosure 2.

Since 1979, the States of South Carolina, Washington, and Nevada have adopted enforcement mechanisms of their own, including suspension of site-user privileges. In addition, South Carolina and Nevada have adopted civil penalty sanctions. The State enforcement actions, which are usually taken as soon as a violation is discovered, appear to be an effective means of keeping the waste generators

alert to the need for continued compliance. If a State imposes a sanction, NRC has chosen not to impose a penalty of its own against the licensee, unless, there is a significant difference between the level of penalty the State imposed and that which NRC could levy, or the case itself merits a double sanction because of its repetitiveness or severity. In those cases in which the NRC chooses not to impose a sanction, NRC does issue a Notice of Violation to the licensee, acknowledging that the State has already imposed a sanction, and requiring a response to NRC regarding the licensee's corrective action.

As a result of the increased Federal and state efforts described above, the number of violations being noted in shipments of low-level wastes has decreased significantly. In its recent report of its radioactive materials transport surveillance program for the FY 81 period, the State of South Carolina noted that of 4742 incoming shipments to Barnwell which had been inspected, discrepancies were noted in only 160 shipments, or less than 4 percent. Of those 160 shipments, only 10 or 0.21% were of sufficient severity to merit the assessment of a penalty and, in that regard, South Carolina levied a total of $19,500 in civil penalties, including several suspensions of user privileges. In its report, South Carolina also noted that "The most significant hazard during the 1981 study year continued to be the poor mechanical conditions of some transport vehicles." In its conclusions, several recommendations were made regarding improvements in compliance with the motor carrier safety regulations.

In the case of shipments to Richland, the annual report by the State of Washington for 1979-1980 indicated that even though the volume of incoming shipments had increased by an order of magnitude, the number of violations

remained about the same. The report stated "...the awareness of shipping and labeling requirements amongst generators, brokers, and shippers using the Richland site has increased noticeably...."

In its report for FY 81, Nevada noted that the number of violations found in shipments to Beatty had fallen from 22 in the first quarter to one in the last quarter. They attributed this decrease to less shipments, as well as the institution of their third-party inspection system for waste generators.

ENCLOSURE 1

TABLE 1A
BASE CIVIL PENALTIES

	Plant Oper, Const, Health Physics and EP	Safeguards	Transportation: Greater than Type A Quantity 1/	Transportation: Type A Quantity or less 2/
a. Power Reactors	$100,000	$100,000	$100,000	$5,000
b. Test Reactors	10,000	10,000	10,000	2,000
c. Research Reactors & Critical Facilities	5,000	5,000	5,000	1,000
d. Fuel Fabricators and Industrial Processors 4/	25,000	100,000 3/	25,000	5,000
e. Mills and Uranium Conversion Facilities	10,000	--	5,000	2,000
f. Industrial Users of Material 5/	10,000	--	5,000	2,000
g. Waste Disposal Licensees	10,000	--	5,000	2,000
h. Academic or Medical Institutions 6/	5,000	--	2,500	1,000
i. Other Material Licensees	1,000	--	2,500	1,000

1/ Includes irradiated fuel, high level waste, unirradiated fissile material, and any other quantities requiring Type B packaging.

2/ Includes all other quantities requiring Type A packaging (including low specific activity waste (LSA), limited quantities, and excepted articles).

3/ This amount refers to Category 1 licensees (as defined in 10 CFR 73.2 (bb)). Licensed fuel fabricators not authorized to possess Category 1 material have a base penalty amount of $50,000.

4/ Large firms engaged in manufacturing or distribution of byproduct or source material.

5/ Includes industrial radiographers, nuclear pharmacies, and other industrial users.

6/ This applies to nonprofit institutions not otherwise categorized under sections "a" through "g" in this table.

ENCLOSURE 2

TRANSPORTATION CIVIL PENALTIES

1/1/82 - 12/31/83

LICENSEE	PROPOSED AMOUNT/DATE	SEVERITY LEVEL	DATE PAID	REASON FOR CIVIL PENALTY
New England Nuclear Corp. Boston, MA	$3,600 3/30/82	I	5/3/82	Shipment of LSA material in containers which were not strong tight packages and failure to immediately notify the NRC.
Nuclear Fuel Services Erwin, TN	$2,500 8/9/82	III	9/7/82	Low enriched licensed material was inadvertently shipped in drums that were believed to be empty.
Tennessee Valley Authority (Browns Ferry)	$3,125 12/17/82	III	1/11/83	Shipment of low specific activity radioactive waste with defective drums.
Victoreen Inc. Cleveland, OH	$625 1/6/83	III	2/14/83	Failure to provide shipping papers and labelling for a shipment containing radioactive material.

LICENSEE	PROPOSED AMOUNT/DATE	SEVERITY LEVEL	DATE PAID	REASON FOR CIVIL PENALTY
John R. Sinkey, M.D. Toledo, OH	$500 4/21/83	III	Remitted	Mailing of Iodine-131 to patients in violation of postal service.
Kay-Ray, Inc. Arlington Heights Illinois	$1,800 9/23/83	III	10/25/83	Shipment with radiation levels in excess of limits.
Professional Service Industries Oak Brook, IL	$2,000 10/20/83	III	1/18/84	Failure to have shipping papers and inadequate packaging.
Brigham & Woman Hospital Boston, MA	$1,875 11/8/83	III	12/12/83	Shipment with radiation levels in excess of limits.
Northern States Power Company (Monticello)	$2,500 11/23/83	III	12/28/83	Loss of package integrity and radiation levels in excess of limits.

Senator PERCY. I wonder if the second panel would take their chairs at the witness table.

I will identify Mr. James Marquez, General Counsel, U.S. Department of Transportation; Donald L. Ivers, Chief Counsel, Federal Highway Administration; Edward P. Faberman, Acting Chief Counsel, Federal Aviation Administration; George W. Tenley, Jr., Acting Chief Counsel, Research and Special Programs Administration; and John M. Mason, Chief Counsel, Federal Railroad Administration.

Because we are running a little behind, I wonder if you could, Mr. Marquez, summarize your statement. The full statement, of course, will be incorporated in the record. We will have some questions. I appreciate your being here this morning.

TESTIMONY OF JIM J. MARQUEZ, GENERAL COUNSEL, U.S. DEPARTMENT OF TRANSPORTATION; DONALD L. IVERS, CHIEF COUNSEL, FEDERAL HIGHWAY ADMINISTRATION; JOHN M. MASON, CHIEF COUNSEL, FEDERAL RAILROAD ADMINISTRATION; EDWARD P. FABERMAN, ACTING CHIEF COUNSEL, FEDERAL AVIATION ADMINISTRATION; AND GEORGE W. TENLEY, JR., ACTING CHIEF COUNSEL, RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION

Mr. MARQUEZ. Thank you for inviting us, Senator. I appreciate your giving me the opportunity to make a very short and brief statement.

We are pleased to be here with you today to discuss the Department's program for civil penalty enforcement for hazardous materials violations. As you have stated, I have with me today the various Chief Counsels who are well versed on topics which may concern you today. We are all prepared to testify this morning. As you know, the Department of Transportation, under the Hazardous Materials Transportation Act, is the primary agency responsible for ensuring the safe transportation of hazardous materials.

Although the assessment and collection of civil penalties for violations is very important, it is only one part of the Department's broad approach in assuring safety in commercial transportation.

We develop and enforce overall standards for truck, rail and air safety, we issue guidelines for the packaging, labeling, loading, and unloading of hazardous materials, and we coordinate all regulatory and enforcement activities with other Federal agencies.

As you know, Secretary Dole has made the maintenance and continued improvement of safety in all modes of transportation a primary goal of her administration. To that end, she has established an in-house safety task force which is chaired by Mr. Ivers, to my left, whose function is to examine means of improving safety in all the modes.

The Department's hazardous materials safety programs for rail, truck, and air sectors has played a significant role in reducing the number of hazardous materials incidents in recent years. The individual statements of the Chief Counsels present a detailed picture of the current status of hazardous materials transportation for each industry.

The overall figures do indicate that improvements in the safe transportation of hazardous materials has occurred across all of the modes of transportation. For example, the rail industry has shown remark-

able and steady improvement in all safety indices, including those involving the transportation of hazardous materials. The number of hazardous materials incidents in the rail mode has been reduced from 1,327 in 1980 to 851 in 1983. Over that same period, the number of rail cars releasing hazardous materials as a result of train accidents decreased from 173 to 62.

Since 1980, none of these incidents has resulted in a death. In terms of highway safety, our records indicate that hazardous materials incidents have been declining since 1978, and on a mileage basis, bulk hazardous materials carrier accidents occur at about half the national average rate for all truck accidents.

With regard to civil penalty enforcement under the Hazardous Materials Transportation Act, the Secretary has delegated most of that enforcement responsibility to the modal administrations. RSPA has promulgated regulations for the whole Department which are subject to review and concurrence by the Secretary, and each operating administration has integrated the Hazardous Material Transportation Act enforcement into its overall safety program.

The procedures and the substantive approaches that are used in the Department in the various modes are very similar. To check compliance with regulations and find violations, each operating administration conducts inspections and investigations of carriers, shippers, or persons subject to its jurisdiction. In cases where a violation is found, the agency takes administrative steps against the violator, including assessment and collection of civil penalties.

The level of civil penalties proposed is based on the guidelines that are set forth in 49 U.S.C. 1809(a), directing that we take into account, in assessing these penalties, the nature, circumstances, extent, and gravity of the violation committed and, with respect to the person found to have committed such a violation, the degree of culpability, any history of prior offenses, ability to pay, effect on ability to continue to do business and such other matters as justice may require.

In short, we are required to consider all of these circumstances before assessing a final penalty. Whenever someone is cited for a violation, that person has the opportunity to discuss the matter informally with the Department and may present any mitigating factors. Such person may also request a formal hearing.

As I noted before each of our operating agencies have substantially similar procedural requirements. Although each program recognizes the need in appropriate cases to set penalties at a level that will serve to deter the particular violator as well as others in that industry, sanctions available under the act are used more as a tool for achieving compliance rather than for imposing punishment. In other words, the statute is deemed to have more of a remedial than punitive purpose. Because penalty assessment is recognized as a highly subjective undertaking, uniform treatment and adherence to statutory assessment criteria are fundamental.

Notwithstanding the fact that we have a good safety record, we believe there are some areas which warrant further study in order to evaluate the efficiency and effectiveness of hazardous safety enforcement, both from the standpoint of our safety mission and our responsibility to ensure that obligations owed the Federal Government are paid.

We will encourage more information sharing among the various agencies so as to have a system that encourages uniformity in the Department's overall program. We will explore whether our procedures for applying the Debt Collection Act and assessing interest and delinquent payment penalties can be made uniform. We can review the adequacy of the training and procedures used by the operating administrations to assure that they are appropriate in terms of the purpose of the act.

I believe that in examining ways for increasing coordination and uniformity in the Department's efforts, we must take into account the needs of each of the modal administrations, because some flexibility is required to tailor the overall hazardous materials enforcement program to the character of the respective agencies.

Senator, I know that you have concerns about certain hazardous materials incident in the past, and in that regard, the chief counsels of the various administrations who are much more familiar with those specific incidents than myself, are available to answer your questions.

Senator PERCY. I am delighted that you did bring your colleagues with you. I understand that this is your first testimony before a Senate committee. I will not give you too hard a time, I can assure you of that.

Mr. MARQUEZ. I appreciate that, sir.

Senator PERCY. Your record as U.S. attorney for the State of Kansas is well known to all of us. You have a deep interest in the drug abuse problems, and we admire the way you established the Drug Task Force and Law Enforcement Coordinating Committee in accordance with the President's initiatives in those areas.

I would like to say at the outset to you and your staff that we have had really outstanding cooperation with your Department as we pursued our inquiry, and the staff commented to me particularly on the support that we had received, and the help. We would like to acknowledge, as you and your colleagues did in your statements, and it is contained in your statement, the world has never really seen a transportation system as efficient, as safe and reliable as we have today throughout this Nation.

All the employees at your Department are to be commended for their role in helping to bring this about. Particularly, I want to commend them to Secretary Dole for the outstanding job that she has done and the very, very high order of priorities she has placed upon safety.

As a result of that remarkable record, I am a firm advocate of the Dole-Dole ticket as a cost-saving measure in order to reduce the budget deficit by eliminating the use, the need for a Vice President's residence. [Laughter.] And let Senator Dole just move in as Vice President with Mrs. Dole in the White House. [Laughter.]

Mr. MARQUEZ. I am sure she will be pleased to hear that, sir.

Senator PERCY. You convey the message for her. I have great enthusiasm for her professional work, and I will be her campaign manager anytime.

Let me just start in with Mr. Ivers, then, if we could address ourselves to the Federal Highway Administration. I appreciate the point that has been made in your statement that the Federal Highway Administration's enforcement policy is more remedial than punitive in nature. But civil penalties are not just punishment; they are intended

to deter illegal behavior; to make it less economically attractive to break the law, and to comply with it.

I would like to ask you about one case in particular, the details of which I have here, the Purolator Courier Co. This is a 3-year-old case, but it illustrates a problem that still exists. This company apparently tried to save some money by combining shipments of hazardous radiopharmaceuticals. They packaged and loaded these radioactive items improperly on a number of occasions, exposing drivers and workmen to health risks. Indeed, anyone passing by could have been injured had any of these improperly loaded parcels fallen off a truck.

I have here a case report from an FHWA New York inspector noting 64 discovered violations and 27 documented violations. Similar infractions occurred in Michigan, Georgia, and North Carolina. One of your field inspectors told my staff that as many as 200 individual violations by Purolator Courier were noted by inspectors.

Subsequently, the FHWA cited Purolator for just 14 violations, subject to a maximum penalty of $140,000. The total proposed penalty is just $24,500, and the penalty finally agreed to was just $8,000. On the very date this field inspector was told by a supervisor of this final settlement, which is June 19, 1981, he made an inspection of a Purolator facility. He found a violation very similar to the ones for which he had cited Purolator earlier.

In a case like this, Mr. Ivers, the company may be saving more money by breaking the law than by complying with it. The penalties, as small as they are, are plainly not deterring behavior of this kind.

Would you have any particular comments on this case?

Mr. IVERS. Senator, I would like to say, to begin with, that the Purolator case involves a company that has approximately 5,000 drivers, 70 terminals and approximately 1,435 trucks in operation. When you spread out the activity of the Bureau of Motor Carrier Safety over an organization that large in combination with the other tasks that they have to perform, the size of the organization, I think, lends itself to the ability to discover discrepancies and deficiencies just about anytime you walk into it. It is a large organization.

We have found that during the course of working with Purolator, and I believe that the figures that the Senator has cover a period of about 11 years, that through audits, they cover a rather extensive period. It involves several audits in several different locations as well as spot checks on specific vehicles.

We have found, it has been our experience that when a penalty or a violation is discovered with Purolator that Purolator is quick to respond, to make the necessary corrections, even to the point of adapting its equipment to better handle the types of material that it is carrying based upon recommendations from our inspectors.

We feel that the remedial effect, if you will, of first assessing the penalty, working with the carrier in an attempt to ensure future and improved compliance, has paid off in the long run for companies like Purolator more so than assessing large penalties against them and letting it go at that.

Senator PERCY. I would like to ask you about the nine cases that resulted in either death, serious injury or evacuation of significant numbers of local residents. When the committee staff asked you about them, you reported that you conducted investigations in just two of

the nine incidents. You cited for a violation in just one, and you didn't collect a penalty in any.

Whenever drivers or nearby residents are seriously injured or killed or have to be evacuated, don't you agree that someone should investigate and if there is a violation, there should be a penalty? One of these cases involved a 13-year-old girl whose face was burned by poisonous gas leaking from a truck. Do you have any comment on those cases?

Mr. IVERS. On those particular cases, again, they extend over a rather extensive period of time. I take that back, over the last couple of years. The initial reports indicated in those cases where there was no investigation that there was no evidence of any violation of motor carrier safety regulations. In the two where there was investigation, we did find violations. In one of those cases, the investigation resulted in a finding of the safety rating of unsatisfactory, and that carrier is in the process of trying to improve its hazardous materials program. But at the present time, it would not be qualified to carry hazardous materials.

In the other case where a violation was clearly identified——

Senator PERCY. Let me just read right directly from the hazardous materials incident report at the Department of Transportation.

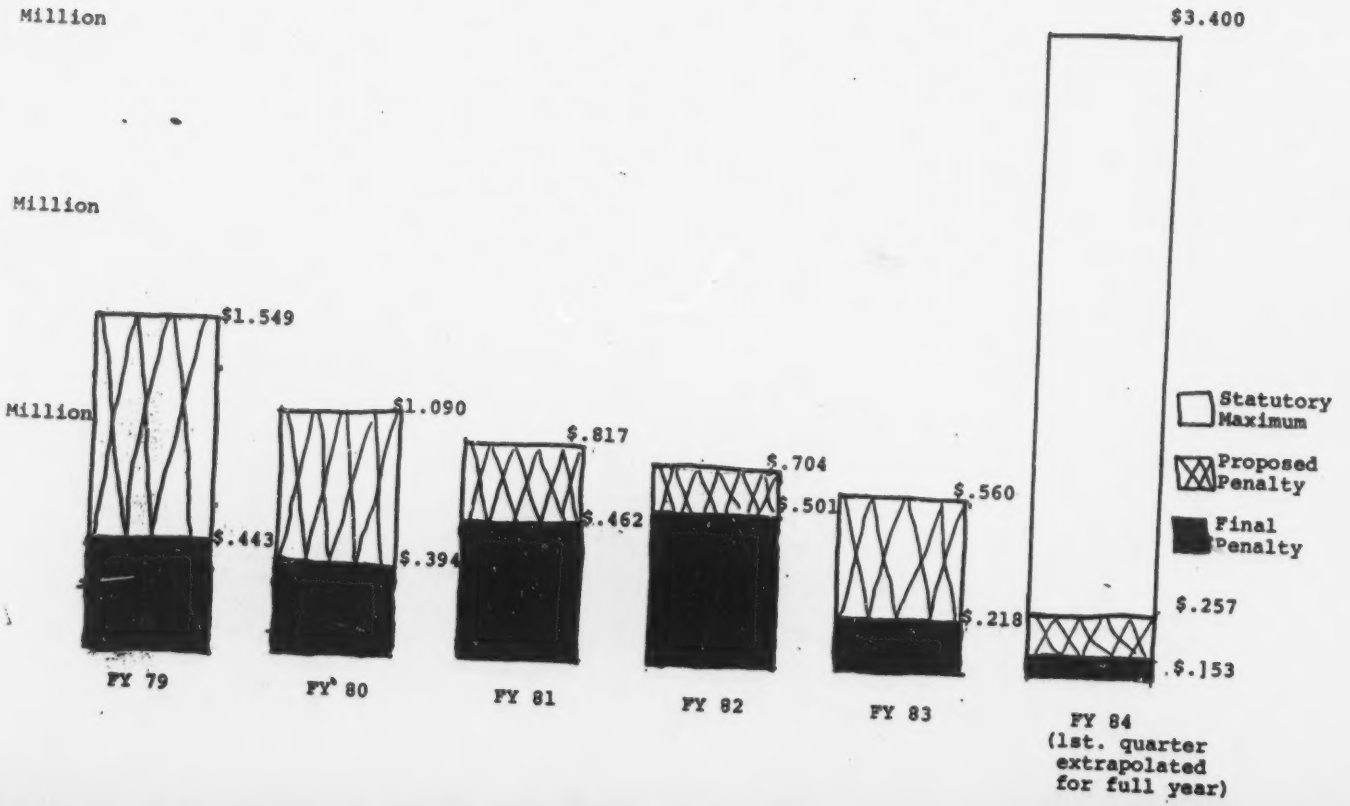
The 4,000-gallon tank owned by Blane Chemical would not hold the 3,000-gallon load which resulted in an overflow. The problem was that the overflow came through an unprotected gauging pipe on top of the tank, instead of an overflow pipe as designated, when the overflow received an air pocket from the empty jug. It produced a fine mist of sulfuric acid which drifted southeast and hit a 13-year-old female. This female received first degree burns of her left cheek, neck, left arm, and upper back. The doctor has said no scarring and the child should be fine, no violation, apparently.

Mr. IVERS. There was no apparent violation of the motor carrier safety regulations in that case, Senator. There was a recommendation made to the company to either remove the tank from that location or to purchase a tank with a larger capacity. I do not have information present today to confirm whether or not the company followed those recommendations. But there was no detected violation of motor carrier safety regulations in that case. We did investigate that.

Senator PERCY. I would like to call your attention to this particular chart. It shows a 70-percent reduction in the imposition and collection of penalties for hazardous shipping violations over the past 2 years. For fiscal year 1982, the FHWA collected over $500,000 in penalties for hazardous shipping violations. In the first 3 months of fiscal year 1984, you collected less than $40,000.

[The chart referred to follows:]

FEDERAL HIGHWAY ADMINISTRATION
PENALTY ACTIONS 1979-1984



Senator PERCY. Could you cite why this situation has occurred?

Mr. IVERS. I believe I'm familiar with that particular chart. I believe the reasons the drop can be attributed to are twofold. One, over the last couple of years, we have put forward or set forth on a policy of assessing penalties more against individuals; we have found more individuals responsible for violations. Assessing a penalty against an individual requires an examinaton of the individual's financial capacity to pay. That, in most cases, if not all cases, dictates a smaller penalty.

The first quarter figures for fiscal y[illegible] 1984 also reflect a fewer number of violations detected during th[illegible] period. That is not to say there was a decrease in activity, we just have failed to discover a larger or as large a number of violations.

Senator PERCY. I will ask staff to keep in touch with you quarterly this year to just keep me informed as to what the trend, the pattern is here, and obviously, we will always hope that violations and fines are reduced because performance is improving as a result of our vigilance. I would like to keep up to date on that, and I thank you.

Mr. IVERS. We would hope that that also is the case, Senator. I would like to say in my role as chairman of the Safety Review Task Force that one of the areas the Secretary is very concerned about is hazardous materials transportation, and she has directed that the task force take a close look at that area. I believe this hearing will be of great assistance to us—the information generated here.

Senator PERCY. Very good. Thank you.

Now, Mr. Mason, your agency collection figures are better than those for the rest of the Department. That is as it should be, because railroad accidents are more serious, generally. Let me ask you about the Livingston accident, the facts which are similar to an accident which occurred just 3 weeks ago near Gillette, WY. Both cases involved inebriated train engineers. I do not want to downgrade the importance of placarding train cars or keeping accurate shipping records or the like, but if I can think of one unexcusable danger to the public safety, it is a drunken train engineer.

You stated in the Livingston case, and I quote, "FRA investigators found no violations of any rail safety laws or rules." Wasn't the engineer drunk?

Mr. MASON. The investigation revealed that the engineer and the brakeman, both in the cab of the locomotive, were quite inebriated.

Senator PERCY. Wasn't it true that he had a girlfriend driving the train?

Mr. MASON. That is correct, Senator Percy.

Senator PERCY. Wasn't it true that the investigation proved that they drove above a safe speed?

Mr. MASON. Yes.

Senator PERCY. And that she, not he, misapplied the emergency brakes which resulted in the train being derailed? Is that correct?

Mr. MASON. There was an application of the emergency brakes, and she, being totally inexperienced in handling a train under that kind of condition, really had no idea how to pull the train to a safe stop.

Senator PERCY. All we do know is that the town of Livingston has never been the same since. How can we possibly justify it to those people that there has been no violation of any laws or regulations?

Mr. MASON. I'm not sure that anything we could have done following the accident would have restored the health and property or the lives of the people of Livingston, LA. The Department's heart goes out to those people.

The real problem, as you have identified, Senator, is the use of alcohol and drugs in connection with the rail employees on the job, and the Department is very close to the promulgation of a Federal rule that will both state a policy and make a Federal regulation against consuming alcohol or drugs by rail employees in connection with their duty on the railroad.

Without getting into the specifics of the rule, the Federal Government, the Department of Transportation, will become quite deeply involved in attempting to bring this matter under control.

Mr. MARQUEZ. Senator, as General Counsel for the Department, I did advise your staff yesterday that the proposed rule that Mr. Mason is referring to is presently in the Office of General Counsel for review. Without describing the specifics of the rule because the Secretary has not signed off on it, I do want you to know that we are addressing that particular issue.

Senator PERCY. In light of the recent actions, however, in Wyoming, have you considered adopting emergency regulations to accomplish our end objective?

Mr. MASON. We did consider the possibility of imposing an emergency order in light of the awful coincidence of having two accidents involving seven deaths in 12 days, both occurring on the same railroad, and both involving substantially similar sets of facts.

We investigated. The Administrator, John Riley, myself, and Joe Walsh, the head of our Office of Safety, spent 2 days in Wyoming and Colorado following up on our own field inspector's presence out there, looking at the accident sites, talking to the officials of the BN, to the rail employees. We determined that, among other things, the Burlington Northern had taken appropriate measures immediately in order to make sure that they did not have another occurrence of this kind of flagrant violation of the safety practices of the railroad.

I personally viewed the Pedro accident, along with John Riley, near the border of South Dakota and Wyoming, and it was a sickening sight, believe me, Senator Percy, to see the caboose, for example, in which two men were killed as a result of a rear end collision, not recognizable even as anything that belonged to a railroad, much less a caboose.

We spent a lot of time and effort out there. We had a press conference and made it clear, as we are making clear today, that FRA and the Department of Transportation are moving as fast as we can to have a rule issued and on the books that will address this kind of problem.

The Secretary is very concerned about it, as are we.

Senator PERCY. Do you have any comments, Mr. Marquez, of the experience in this area?

Mr. MARQUEZ. No; I have nothing to add, Senator, other than the fact that it is a concern of the Department. I can assure you that I am personally trying to expedite the review of that rule.

Senator PERCY. Mr. Mason, the next concern is about serious safety violations on trains carrying hazardous substances and when those violations increase the risk of derailment, and those items are to be dealt with under the Hazardous Materials Transportation Act.

This way, if they were held under that act, the maximum penalty per violation would be $10,000, not $2,500. That seems appropriate, especially when you consider violations like in Waverly, where the safety violations were far more serious and contributed far more to the accident than the hazardous materials violations. I really urge you to review your HMTA regulations to see if you can include serious safety violations on trains carrying hazardous materials.

I understand that this is now being done by FHWA with trucks carrying hazardous substances.

Could you let us know back in, say, 60 days, how this is proceeding?

Mr. MASON. Absolutely, Senator Percy. We will do that.

Senator PERCY. Fine. Thank you very much.

[The information referred to follows:]

U.S. Department of Transportation
Federal Railroad Administration

Office of the Administrator

400 Seventh Street, S.W.
Washington, D.C. 20590

July 10, 1984

The Honorable Charles H. Percy
United States Senate
Washington, D.C. 20510

Dear Senator Percy:

During my testimony before your Subcommittee on Energy, Nuclear Proliferation, and Government Processes on May 9, 1984, you asked me to report back to you on whether, by an incorporative regulation, serious violations of the rail-specific safety laws occurring on trains carrying hazardous materials can be prosecuted under the Hazardous Materials Transportation Act (HMTA).

As set forth below, I have concluded that the Department of Transportation lacks the requisite statutory authority to do so.

Summary of the Rail Safety Laws

The rail safety laws (excluding the HMTA as it relates to rail transportation) are the Federal Railroad Safety Act of 1970 (1970 Safety Act) and a number of older statutes covering specific subjects: the Safety Appliance Acts, the Power or Train Brake Safety Appliance Act of 1958, the Locomotive Inspection Act, the Accident Reports Act, the Hours of Service Act, and the Signal Inspection Act. FRA has issued regulations under the broad rulemaking power of the Safety Act covering a variety of subjects, including: track and roadbed safety, freight car safety, railroad operating rules, radio rules, rear end markers, and safety glazing. FRA has also issued regulations under the older safety laws.

With the exception of the Hours of Service Act, which contains a flat statutory penalty of $500 per violation, all of the rail safety laws set a minimum civil penalty of $250 and a maximum of $2,500, in accordance with the range originally set forth in the Safety Act in 1970. Congress amended the other safety laws in 1976 to conform their penalty ranges to that of the Safety Act. Except for provisions covering willful violations of recordkeeping rules, none of the rail safety laws authorizes criminal sanctions. The HMTA, by contrast, provides for civil penalties up to $10,000 and criminal penalties of a fine of up to $25,000, imprisonment for up to five years, or both, for all violations of the HMTA or regulations issued under it.

Implementation of the Proposal

To implement the Subcommittee's suggestion would require a rule issued under the HMTA that (i) incorporated by reference both the substance of the rail safety laws and the provisions of the rail safety regulations that affect the safe transportation of hazardous materials, and (ii) made the HMTA penalties applicable to violations of those laws and regulations that cause or create a substantial risk of a train accident involving a hazardous materials release. The rule would exclude those rail safety regulations having no bearing on hazardous materials safety, i.e., regulations covering safety appliances, accident reports, and blue signal protection. Virtually all other present rail safety laws and rules would be incorporated, as consistent with the purpose of the proposal, namely, to reach all violations that pose a substantial risk of a hazardous materials accident.

The result of such an incorporative rule, of course, would be to make the HMTA's civil and criminal penalties applicable, under defined circumstances, to violations of the incorporated rail safety statutes and regulations, notwithstanding that all of these statutes (as enacted and, by amendment, made uniform in 1976), and the regulations issued under them, are tied to explicit and significantly lower civil penalty ceilings and do not allow for criminal penalties.

Authority to Apply the HMTA Penalties by Incorporation

Assuming arguendo that such a rule would otherwise pass muster, e.g., not be found arbitrary and capricious as a factual matter, the difficult legal question is whether this incorporating regulation would be incompatible with the letter and intent of the penalty provisions of the rail safety laws, and therefore invalid as beyond the Department's authority.

Although the answer is by no means free of doubt, a careful analysis of the relevant legislation and its history, in my judgment, demonstrates that the requisite authority is lacking.

In the context of the 1970 Safety Act, three factors bear noting. First, FRA, by inheritance from the Interstate Commerce Commission, was enforcing the then existing patchwork of specific rail safety laws and regulations issued thereunder, each with explicit, though disparate, civil penalty ranges and maximums. Similarly, FRA was charged with responsibility for ensuring compliance with a statute and underlying regulations relating specifically to hazardous materials transportation (the forerunner of the HMTA); enforcement, however, occurred solely through proceedings instituted by the Justice Department for criminal fines. Third, Congress was clearly aware of the

principal gap in this scheme: the absence of any broad Federal regulatory and enforcement authority over rail safety to address defects in track, equipment, and operations that caused train accidents, particularly those involving hazardous materials. See H.R. Rep. No. 91-1194, 91st Cong., 2d Sess. 9-11 (1970); and S. Rep. No. 91-619, 91st Cong., 1st Sess. 2-6 (1969).

In response to this growing problem, i.e., the inability of the government to take effective action in the face of an unacceptable industry safety record, the 1970 Safety Act granted FRA broad safety regulatory power, coupled with the ability to assess civil penalties for violations of regulations issued thereunder in the range of $250 to $2500. The existing body of laws and regulations relating to transportation of hazardous materials by rail, including the enforcement and criminal penalty schemes, as outlined above, was not addressed as such by the 1970 Safety Act. Nevertheless, one of the central premises of that legislation was that the most effective method to reduce rail accidents, including those involving hazardous materials, was to establish by Federal regulation appropriate safety standards for rail transportation generally, backed by an administrative civil enforcement scheme. Id. In 1972 and 1973, respectively, FRA issued comprehensive track and freight car standards under the 1970 Safety Act in direct response to Congress' principal concern.

In 1974 Congress focused its attention on the transportation of hazardous materials across all modes, including rail. The result was enactment of the Transportation Safety Act of 1974, Title I of which contained the HMTA. The principal provisions of the HMTA embody Congress' determination that the dangers of hazardous materials transportation, as evidenced by the accident record, demanded a broad, uniform regulatory and enforcement scheme to supplant the existing piecemeal approach to this subject. S. Rep. No. 93-1192, 93d Cong. 2d Sess. 1, 6-7 (1974). The HMTA authorizes the Secretary of Transportation to issue "regulations for the safe transportation in commerce of hazardous materials [, which] may govern any safety aspect of the transportation of hazardous materials which the Secretary deems necessary or appropriate . . . ." 49 U.S.C. § 1804(a). Uniformity of regulation was assured by a strict pre-emption standard. 49 U.S.C. § 1811. The cumbersome and impractical criminal approach to routine enforcement was replaced by provisions allowing for administrative assessment, adjudication, and settlement of civil penalties, to a maximum of $10,000, for knowing violations of the HMTA or any regulation issued under it. Stiff criminal penalties, up to a $25,000 fine and/or imprisonment, were reserved for willful violations.

The breadth of the regulatory authority granted to the Secretary by the HMTA cannot be gainsaid, nor do we wish to here. But the legislative history of the HMTA and actions taken by Congress contemporaneously with and subsequent to its enactment counsel against reading into the HMTA the authority to promulgate the incorporative rule at issue. First, Congress in 1974 was clearly aware of the continued problem of serious hazardous materials accidents in the rail mode; in its view, many were attributable to the railroads' failure to comply with the rail safety laws and regulations. See H.R. Rep. No. 93-1083, 93rd Cong., 2d Sess. 12-15 (1974); S. Rep. No. 93-1192, 93rd Cong., 2d Sess. 9-14 (1974). Nevertheless, Congress chose then not to raise the penalty levels for violations of the rail safety laws and regulations, either generally or with specific reference to such violations insofar as related to train movements containing hazardous materials. Instead, the 1970 Safety Act, including its penalty range, was merely reauthorized, and I find it significant that this reauthorization was enacted at the same time and in the same legislation containing the HMTA, i.e., as Title II of the Transportation Safety Act of 1974. Also left undisturbed were the still disparate penalty levels contained in the older rail safety laws, which continued to apply, respectively, to the various classes of safety regulations promulgated under each and enforced by FRA.

Moreover, on the one subsequent occasion, in 1976, in which Congress addressed the penalty levels applicable to the rail safety laws and regulations, there was no expression of concern or dissatisfaction that the amounts were too low to be capable of effecting compliance generally or with respect to track or equipment defects or unsafe practices as might affect the rail movement of hazardous materials. Instead, Congress determined only that, with the exception of the Hours of Service Act, all violations of any of the rail safety laws and regulations should be subject to a uniform civil penalty range. The range chosen, as noted above, was the $250-2500 range established originally in the 1970 Safety Act.

Since this conforming legislation in 1976, FRA's administration of the 1970 Safety Act has been reauthorized by Congress several times, attended by hearings focusing on, inter alia, the effectiveness of the agency's regulatory and enforcement program in reducing train accidents, injuries, and deaths, most particularly with respect to trains carrying hazardous materials. See, e.g., Railroad Safety: Hearing Before the Subcomm. on Transportation and Commerce of the House Comm. on Interstate and Foreign Commerce, 96th Cong., 2d Sess. 1, 142-146 (1980). As Congress is well aware, FRA has since then continued to revise and expand its regulatory coverage under the rail safety laws, with a consistent theme that safer rail operations generally are a primary safeguard against

hazardous materials accidents. At no point has Congress expressed misgivings about this approach nor one of its corollaries, which is that the penalty for violations of this now expanded body of general rail safety regulations is a maximum $2500 civil fine, irrespective of any relationship between the violation and the movement of hazardous materials. No suggestion has been made that in 1974 Congress expressed an intention that such "related" violations would, or should, universally be subjected to the higher $10,000 maximum established by the HMTA, or that the Secretary possessed the authority to accomplish that result by an incorporative regulation and was remiss in failing to do so. Nor, throughout this 14-year history, has Congress ever suggested that the HMTA's stiff criminal penalties be utilized in that manner for "related" violations.

The foregoing pattern of legislation and responsive agency regulatory activity tends to negate, in my judgment, any inference that Congress intended the HMTA to be a source of authority for the Secretary to apply the higher HMTA civil penalty maximum and stiff criminal sanctions in the suggested fashion to an enormous body of rail safety regulations issued under other statutes that fix lower civil penalties and omit criminal sanctions virtually altogether. The validity of such an incorporative regulation presumably rests on the theory that it would formally be issued "under" the HMTA as a "regulation[] for the safe transportation in commerce of hazardous materials." 49 U.S.C. § 1804(a). I have considerable doubt, however, that under the circumstances the courts would view the rule as anything more than a regulatory ipse dixit: a rulemaking designed solely to circumvent the penalty scheme that Congress has established for the rail safety laws and has implicitly reaffirmed as sufficient.

Two final points support this conclusion. First, had it wished to narrow or eliminate the difference in penalties between the HMTA and the rail safety laws, Congress could easily have inserted, in the HMTA in 1974 or thereafter, the requisite authority to apply the HMTA civil and criminal penalties to any or all of the regulations issued under other, specified rail safety laws to the extent such regulations related to hazardous materials movements by rail. Given the constant attention of Congress on the dangers of such movements throughout this period, I believe its silence in this regard has some significance. Second, there is evidence that Congress was aware that legislative action of some kind, notwithstanding the breadth of the language in section 105 of the HMTA (49 U.S.C. § 1804(a), quoted supra), was necessary to enable an agency such as FRA to apply the HMTA penalties comprehensively to regulations issued under other laws. In considering the HMTA itself, Congress confronted a situation wherein certain regulations dealing with air transportation of hazardous

materials had been issued under the Federal Aviation Act of 1958; those regulations carried a maximum $1000 civil penalty, and criminal fines ranging from $500 to $2000, in accordance with that statute. In order that the agency (the Federal Aviation Administration) could apply the higher HMTA civil and criminal penalties to violations of those existing hazardous materials regulations, Congress, in the HMTA, amended the 1958 Act to provide the requisite authority. See 49 U.S.C. §§ 1471(a)(1) (civil) and 1472(h) (criminal). This amendment did not empower DOT to assess HMTA penalties for violations of all of FAA's safety regulations that might have an effect on the safe transportation of hazardous materials. In fact, the authority it did confer, i.e., to assess penalties at HMTA levels for violations of regulations specifically concerning hazardous materials, but issued under a statute other than the HMTA, was much more narrow than the broad authority DOT would need to implement the Subcommittee's proposal in the rail safety context. The important point is that Congress found it necessary to take legislative action even to confer the more narrow authority.

My conclusion, therefore, is that the regulation implementing the Subcommittee's proposal would not, in reasonable probability, be upheld as within our existing statutory authority. Your Subcommittee's diligence in this area demonstrates a keen appreciation of the fact that safe transportation of hazardous materials by rail depends in large part on compliance with the rail safety laws, as well as with the HMTA and its regulations. Let me assure you that FRA's overall compliance program is shaped as well by that view: FRA's annual national inspection plans are designed to concentrate our inspection resources on hazardous materials lines to ensure that the equipment, track, and operating practices on those lines are safe.

As you pointed out at the hearing, the American transportation industry has an admirable record in the area of hazardous materials transportation; this is especially true of the rail mode over the last five years. Your hearing brought about a fresh look at our HMTA enforcement program, and has already resulted in a heightened awareness of its significant role in continuing this welcome trend. On behalf of John Riley, I extend FRA's appreciation for your interest in the safe transportation of hazardous materials.

Sincerely,

John M. Mason
Chief Counsel

Senator PERCY. Now, Mr. Faberman, the FAA does not see as many violations of hazardous shipping rules or other DOT agencies. The consequences of accidents could be severe. I am pleased that today we have not had a Waverly-type accident involving an airplane carrying hazardous substances. Nevertheless, I am concerned that in some recent cases, your penalties have been very small if the violations were serious. In a case involving the Profit By Air Co., the pilot was not informed by the company of the nature and location of the hazardous substances aboard his plane and on many other violations. The maximum penalty could have been $40,000 and possibly higher. Yet the FAA imposed a penalty of only $1,500.

In another case involving Singapore Airlines, hazardous materials which were improperly marked and packaged and which were not in proper condition for shipment were transported inside the United States. In one instance, Singapore Airlines illegally carried radioactive material on board a passenger airplane. The airline company could have been penalized up to $80,000 for these violations, but FAA proposed a penalty of just $3,000. Finally, it settled for a penalty of $2,000.

Could you please comment on these cases? In your view, did these penalties really fit the violations?

Mr. FABERMAN. Good morning, Mr. Chairman. Thank you for your earlier recognition of our efforts in the air transportation area. We have tried to apply the same diligence to our hazardous materials responsibilities as we have with our other safety functions.

In the Profit By Air case which you mentioned, we took a number of things into consideration in proposing the civil penalty. First of all, at the time the civil penalty was proposed, Profit had ceased part of its operation and, in fact, was no longer carrying or shipping hazardous materials but was using air carriers to do that.

In addition, Profit had agreed to institute appropriate training programs. The violation occurred by a contractor that Profit had hired. Profit had hired a professional shipper to do that for them, and Profit believed that the shipper was complying with our regulations.

We hold Profit responsible for that violation. For these reasons, and particularly because their economic condition was poor, we decided that, based upon the training and the changes in procedures they instituted, that $1,500 was an appropriate civil penalty. I will note that in both this case and the Singapore case you asked about were violations that occurred a number of years ago.

I believe, at least my feeling is, that in today's environment, the civil penalties would be somewhat higher than that. But that is the reason why the $1,500 amount was accepted for Profit.

In the Singapore Airlines case, Singapore was extremely cooperative with the investigation. Singapore instituted reprimands against the employees involved. They developed a rather extensive training program, both initial training and recurrent training for all their employees. They established a training procedure in Singapore to assure that hazardous materials being transported to the United States were packaged and certified in accordance with appropriate regulations.

For those reasons, we believe that the $3,000 civil penalty was appropriate. As was mentioned before, although there are some puni-

tive aspects to civil penalties, we believe that they are primarily remedial in nature. Based upon the actions taken by Singapore, we believe that those actions cost them several times the amount of the civil penalty—that overall, it was a reasonable amount.

Senator PERCY. Thank you very much, indeed.

Mr. Tenley, I just have one question for you. Your Material Transportation Bureau reported three recent cases involving hazardous material regulations. In all three cases, the proposed penalties were just a tiny fraction of the statutory maximum, just 13 percent as the chart that we have shows.

In each case, the violation involved the failure to conduct tests or maintain current test data. For example, for steel drums used for the shipment of hazardous substances. In two of the three cases, you settled for half or less than half than the initially proposed amount. As this chart showed, your record is similar to that of the FHWA but on a smaller scale.

Could you explain whether penalties this small are sufficient to ensure compliance with the law?

In these three cases I described above, do you know whether the size of the penalties, ranging from $1,500 to $5,000, was at least as large as the cost of the test the violator failed to conduct?

Mr. TENLEY. Senator, in those, in response to your last question, I don't know if the cost of the violation was equal to the cost of being in compliance. In those cases, though, they are fairly typical of the cases we see in the Materials Transportation Bureau, because we deal with materials primarily before or after transportation. We don't have a record of incidents of leakage of material endangering to the public. So the gravity of our cases is generally going to be less than what we see in the transportation modes that we have already spoken to today.

I think the penalties in each of these cases reflect the fact that based upon our dialog with the violator through the informal process, we are convinced that he had the wherewithal and the commitment to achieve compliance. Based upon that, we settled on a penalty of the size that you note.

Senator PERCY. Thank you very much.

Just a few final questions for you, Mr. Marquez. Maybe we can sum up with a couple of broad questions. I am struck by how small your penalties are throughout the Department. They may not be large enough to make unlawful behavior more economically unattractive than lawful behavior. I recognize civil penalties are just one part of a much broader enforcement effort. But could you commit to me that you would review your agency's performance in this area and report back to the committee in, say, 60 days, the results of that review to see whether or not the penalties' leeway would possibly get the message out that it just doesn't pay to violate and that there can be and would be a stiff penalty? Just review and let me know what you find.

Mr. MARQUEZ. I would be more than happy to do that, Senator.

Senator PERCY. I realize that you are new in your present job and have not had a chance to look at it. That may be a great value. You don't have a long history to defend. You can take a look at it and try a new approach.

I am also concerned that DOT officials may feel that they are under too much pressure to settle these cases with small penalties. They actually, possibly could be under pressure to settle with small penalties. Up to now, it has been difficult for Federal agencies to collect sums they have been owed. But 1½ years ago, the debt collection bill that I authored in this room and finally saw it through to law, now, has made it much easier to collect debts than it used to be.

The Federal Government now has a lot of power to go out and get those debts collected which it didn't have before. That is why $5 billion has rolled in as easily as it has, simply because we have now got the power, and there is a little oversight from here. They know I am going to continue to verify those debts. As a businessman, I can't conceive of running this operation as deep in debt as we are. Financing that deficit is one of the great problems of our interest rates which caused a jump yesterday at 12½ percent in the prime rate, and could really be a disaster in the recovery.

Why not collect our debts and pay down our own deficit as a result of it? We are still owed a couple of hundred million dollars. Getting those debts collected is part of it. All of us, every agency, can add to that by collecting the debts, the penalties that are imposed.

With this act now in place, can you see what you can do to use it to strengthen the Government's hand in these cases? When we, for instance, proposed a penalty of, let's say, $10,000, the final penalty should be $10,000 unless there are good reasons why it should be reduced.

Do you agree with me that there is a limit to how much plea bargaining or whatever you may want to call it goes on with these penalty amounts?

Mr. MARQUEZ. Having been a former U.S. attorney during the last several years, I have filed quite a number of enforcement actions on behalf of the Government. I know that the Debt Collection Act has certainly bolstered our efforts to collect money owed to the Government. In my discussions with the chief counsels about the value of the Debt Collection Act in collecting civil penalties, they have assured me that it has given us an additional tool in seeking compliance or payment of these penalties by the violators.

With regard to the level of penalties assessed and of the amounts of the final settlements, I think in view of the statutes that we have to work under and all of the factors that have to be considered, that it is not always appropriate to impose the maximum penalty. I assure you, however, in answer to your first request, we will review the way the penalties are assessed and report back to you.

Senator PERCY. Thank you very much indeed. I would like to acknowledge the presence of a former colleague of mine and beloved friend, Senator Robert Taft. I just wonder if you would join me here, Bob.

Mr. TAFT. Be glad to.

Senator PERCY. Nice to see you.

Mr. TAFT. Nice to see you.

Senator PERCY. My next appointment is running a little late. We are just so pleased to have you here.

The EPA, which will be represented by our last witness, has a new civil penalty policy. This new policy has a number of excellent features which may be applicable to your Department. For one thing, it makes the enforcement of these penalties far more uniform across the agency. Could you please look into this new policy, consult with EPA, and see what elements of this approach might apply to your Department? Could you get back to me on this, then?

Mr. MARQUEZ. Yes, Senator. We would be more than happy to report back to you.

Senator PERCY. Fine. One problem that we may have is that the DOT personnel responsible for citing violations are not always consulted when penalties are imposed. Do you consider this a problem, and could you look into it?

Mr. MARQUEZ. I am sorry, Senator. I didn't hear all of your question.

Senator PERCY. The problem is that the DOT personnel who are responsible for citing violations are not always consulted when penalties are imposed. This could be a part of the problem. Perhaps you could consider that as you look at the overall situation, too.

Mr. MARQUEZ. We certainly will.

Senator PERCY. Fine.

Mr. MARQUEZ. We will also examine ways of improving communications both within the Department and with other agencies outside the Department.

[The information referred to follows:]

U.S. Department of Transportation

General Counsel

400 Seventh St., S.W.
Washington, D.C. 20590

JUL -9 1984

The Honorable Charles Percy
Chairman
Subcommittee on Energy, Nuclear
Proliferation, and Government Processes
Committee on Governmental Affairs
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

Thank you for your letter following up on your Subcommittee's May 9th hearing on civil penalty enforcement for the transportation of hazardous materials. You asked for further information in four areas. We have reviewed each of these areas, and our views are detailed in the enclosed response.

Should you have any questions about the enclosed material, please do not hesitate to contact me.

Sincerely,

Jim J. Marquez
General Counsel

Enclosure

Attachment

1. Review the Department's penalty performance focusing on how penalties are assessed.

The procedures and substantive approaches of each of the modal administrations concerned with enforcement of the Hazardous Materials Transportation Act -- the Research and Special Programs Administration (RSPA), the Federal Aviation Administration (FAA), the Federal Highway Administration (FHWA) and the Federal Railroad Administration (FRA) -- are reasonably uniform, as summarized below.

FRA -- A FRA safety inspector in the field makes a decision that an action by a carrier or shipper warrants a civil penalty. The inspector prepares a report containing all evidence of the violation and forwards it to the Chief Counsel's office, where an attorney reviews it for legal sufficiency. That initial penalty is assessed in a Notice of Probable Violation, which sets forth all of the facts on which the claims are based. The case attorney uses FRA's internal initial assessment guidelines (a copy of which was provided to Subcommittee staff in advance of the May 9th hearing) and the statutory assessment criteria (49 U.S.C. §1809) to arrive at an initial penalty amount. Thereafter, the attorney will negotiate a settlement of the case, which usually entails discussion between FRA attorneys and Office of Safety staff representing the government, and attorneys and technical experts from the carrier or shipper. Taking into account all mitigating and aggravating circumstances, the attorney recommends a final assessment to the Assistant Chief Counsel for Safety, who issues an Order Assessing Civil Penalty that reflects major factors relied on in reaching the final penalty. A small number of cases are not successfully negotiated, but instead go to an evidentiary hearing before an administrative law judge.

FAA -- The process in the FAA is quite similar. A field inspector makes an initial recommendation for a civil penalty assessment. The inspector is responsible for compiling necessary evidence of a violation and forwarding it through regional supervisory channels to the Civil Aviation Security Office in Washington, and then to the Chief Counsel's Office for legal action. In order to preserve the agency's legal remedies, all possible violations are typically included. During the review process, it may be determined that insufficient evidence exists to support some of the alleged regulatory violations. Based on the evidence, reviewing officials may propose modifications to the penalty amount sought or the alleged regulatory violations cited. The Chief Counsel's Office, however, has the ultimate authority to determine the level of sanction.

RSPA -- Within RSPA, the hazardous material enforcement program is administered by the Materials Transportation Bureau's (MTB) Office of Operations and Enforcement (OOE). Based upon inspection reports resulting from on-site field inspections, a preliminary civil penalty amount is established at the branch chief level and above. The level of civil penalty initially proposed is based primarily on consistency with prior cases involving the same or similar violations and the statutory assessment criteria. A Notice of Probable Violation is issued to the respondent outlining the facts upon which the alleged violations are based, setting out the specific penalty initially assessed, and describing the respondent's procedural rights and obligations. After the respondent has elected a response option, the assessment process then involves evaluating the evidence in light of the respondent's information and arguments, application of the statutory criteria, and weighing the degree to which compliance has been achieved. Thereafter, an order is issued seeking the final civil penalty amount.

FHWA -- The civil penalty assessment process in FHWA parallels that of the other modes. Recommendations regarding assessments are made by the Bureau of Motor Carrier Safety (BMCS) Officer-in-Charge in the State submitting the case, the FHWA Regional Director for Motor Carrier and Highway Safety, and (with the exception of those Regions to which enforcement has been delegated on a demonstration basis) the Operations Division, BMCS. The final decision respecting an initial assessment of a civil penalty rests with the Director, BMCS, on the basis of information submitted by the alleged violator, and the statutory criteria, taking into consideration assessment recommendations.

In general, based upon an initial review of the Department's civil penalty process for hazardous materials violations, it is our belief that the penalties are adequate and reflect the intent of the HMTA. We reach this conclusion in light of the concern expressed during the hearing that penalties be large enough to make unlawful behavior more economically unattractive than lawful behavior. We are confident on the present record that the HMTA penalties now being assessed are ordinarily high enough to penalize unlawful behavior, even in those relatively few instances where noncompliance produces a quantifiable benefit for the violator. Given that the penalties we now collect range from hundreds to a few thousand dollars per violation, a net economic benefit could rarely, if ever, be derived from a hazardous materials violation. For example, it is difficult to perceive any economic benefit accruing to one who fails to secure a tank car's manway cover or to attach the fourth placard to a car carrying hazardous materials.

Although our initial review finds these penalty assessments to be adequate, because of the importance of the issue, the Chief Counsels of the Department's operating administrations will undertake a more in-depth review of civil penalty assessments. The Chief Counsels and my staff will meet on or about August 1 to consider a possible recommendation to the Secretary's Safety Task Force to establish a Department policy for civil penalty assessment under the HMTA. Wider dissemination of information on the hazardous materials regulatory and related enforcement actions may prove to be a useful tool in improving compliance. The safety record for hazardous materials transportation is a good one across all the modes. However, there may be areas where assessment and enforcement of penalties may be improved. It will be the purpose of the Chief Counsels to identify those areas and make recommendations to the Safety Task Force; and we hope to convene regular meetings of the Chief Counsels to discuss common legal issues involved in HMTA enforcement.

2. Review the Environmental Protection Agency's new civil penalty policy and determine what elements of their uniform approach might apply to DOT.

We have reviewed the EPA's Policy on Civil Penalties, dated February 16, 1984. With the exception of what EPA calls the "economic benefit component," the factors weighed by EPA in assessing penalties are substantially the same as those found in the HMTA and applied by DOT in assessing penalties. The "gravity component" used by EPA in calculating the preliminary deterrence amount is a factor we consider in determining the amount of penalty proposed. The HMTA directs us to consider the nature, circumstances, extent, and gravity of the violation as well as the violator's degree of culpability, history of prior offense, ability to pay, effect on ability to continue to do business, and such other matters as justice requires.

EPA's use of an "economic benefit component" in assessing penalties is intended "to remove any significant economic benefits from failure to comply," by taking back from the violator an amount of money that reflects any benefit he may have derived from delayed costs, avoided costs, or competitive advantage. Granting the validity of EPA's own judgment that its "economic benefit component" works in EPA's enforcement arena, we nevertheless find the approach inappropriate for DOT's civil penalty program under the HMTA:

- Based upon our reading of EPA's policy statement, EPA typically confronts companies that have clearly failed to bring a facility into compliance over a long period of time. In such cases, noncompliance has resulted in quantifiable avoidance or delay of costs to the violator. Circumstances such as these are not comparable to HMTA cases which typically involve a violation on a single day or in a single transportation

movement.

- The statutes under which EPA assesses penalties differ from the HMTA in that they grant broad discretion to the EPA in assessing penalties, and they evidence a strong punitive intent. Under the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6928(g)), which, because it addresses solid waste management, is similar to the subject matter covered by the HMTA, EPA's civil penalty determinations are limited only by the maximum amount assessable per violation ($25,000 per day). There are no statutory assessment criteria imposed on the agency in setting civil penalty amounts. Consequently, broad discretion is left to EPA in the manner in which it develops and executes penalty assessment policy. Virtually identical civil penalty provisions have been adopted in the Clean Water Act (33 U.S.C. 1319(d) - $10,000 per day) and in the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 9609 - $10,000 per day).

- EPA's "Framework for Statute-Specific Approaches to Penalty Assessments," at page 11 of its policy statement, provides that where the size of the benefit of noncompliance is not significant (defined as less than $10,000), that benefit need not be considered in assessing a penalty. Thus, the EPA's minimum threshold for consideration of economic benefits of noncompliance is the same as the maximum penalty under the HMTA. Even assuming our ability to do so, DOT would be quantifying economic benefits that EPA itself deems insignificant.

- EPA's minimum threshold appears to recognize the considerable costs of expert resources, e.g., EPA's "case development teams," needed by the agency to perform and apply an "economic benefit component" analysis to civil penalty decisions. Cases involving less than $10,000 of apparent benefit to the violator evidently do not justify those resources. Given the $10,000 maximum penalty in the HMTA, one must question whether the creation and continued funding by DOT of "case development teams" or their analogue, for purposes of the HMTA civil penalty decisions, would be at all justifiable in terms of cost and any resulting improvements in compliance.

3. Determine whether DOT personnel responsible for citing violations of the HMTA are adequately consulted by those who impose the penalties.

In general, DOT field inspectors are responsible for assembling the facts and evidence relative to an alleged HMTA violation. Evaluation of the evidence of a violation and assessment of a

civil penalty is done by the Chief Counsel's offices in FRA, FAA and RSPA and by the Director, BMCS, in FHWA. Although the field inspectors are consulted as appropriate, the decision regarding the imposition and amount of a civil penalty rests solely with the Chief Counsels or the Director. A requirement of direct consultation with each inspector as to the appropriate final penalty for each violation would be impractical, cumbersome, and without benefit. Overall, the current system includes complete consultation at the outset and subsequent consultation when necessary.

The extent of consultation between those who cite HMTA violations and those who assess the penalties varies among the DOT agencies due to the size, organization, and needs of the different enforcement programs:

FRA - Violations of the HMTA are cited by field inspectors stationed across the country; 87 of FRA's 325 inspectors enforce the hazardous materials laws. Each inspector's primary input into the penalty process is ordinarily his or her written violation report, which should provide most of the facts, conclusions, and recommendations necessary to enable the FRA attorneys to impose an appropriate penalty. The inspectors are instructed to address the relevant statutory assessment criteria in their reports, which gives them every opportunity to shape the ultimate penalty.

The Chief Counsel's Office (except in rare cases that go to a hearing) reaches a determination of a final penalty by applying the assessment criteria to the picture that emerges from the violation report, the arguments presented by the respondent, and the legal merits of the case.

The inspector is consulted during the period in which the final penalty is being determined, if (i) the respondent has presented evidence directly contradicting the inspector's factual allegations, or (ii) the nature or frequency of the violations indicates that the participation of the inspector in the penalty negotiations would contribute significantly to getting the point across to the respondent. Technical personnel from FRA's headquarters usually participate in the penalty negotiations, providing a link to the technical expertise and judgments of the field personnel.

FAA - Although the FAA Chief Counsel's Office ultimately determines the amount of proposed civil penalty, it does so only after consideration of all of the available information, including the analysis and recommended penalty of the reporting inspector. In those instances in which reviewing officials believe that a modification of penalty is necessary, the officials consult with and seek the concurrence of the Office of Civil Aviation Security. In addition, in the event the investigative file contains

insufficient evidence or needs clarification, the Chief Counsel's Office works with the reporting inspector to rectify these problems. In all hazardous materials cases that go to a hearing, the FAA field inspectors involved in the investigation are routinely informed as to the status of the case.

FHWA - A Bureau of Motor Carrier Safety Investigator is responsible for documenting any violations of the HMTA found through safety compliance audits, driver/vehicle examinations or complaint or accident investigations. The Investigator's report is reviewed by the BMCS Officer-in-Charge who makes a recommendation regarding a civil penalty assessment. The report with evidence and the recommendations are submitted through appropriate FHWA division and regional channels for approval. Each field and operational level reviewing the case makes recommendations regarding the proposed assessment and, at times, the violations to be cited. After reviewing the submission and recommendations, counsel at headquarters contact the Region to discuss the total assessment and specific violations. The BMCS Director, who has final decision authority, is advised of the region's recommendations. Most cases are settled informally. Any settlement for less than the initial assessment is subject to the approval of the Director, BMCS. Settlement offers are discussed with the Regional Office prior to their submission to the Director, particularly if the offer of settlement is for an amount substantially less than that initially suggested by the Region. Any mitigating factors presented by the respondent are discussed with the Region, as well as with BMCS headquarters staff, prior to the Director's settlement decision. If the Regional Director feels further contact or consultation with the initiating investigator is warranted, such contact or consultation is made through appropriate channels.

RSPA - RSPA's hazardous materials enforcement program is unique in the Department in that, although located at headquarters, it actually operates as a field office. Because the staff of inspectors is based in Washington, each inspector has access to management headquarters staff and a direct impact on penalty determination. The inspector works closely with both his or her supervisor in the enforcement program and the attorney assigned to the particular case; and his or her observations, impressions, and expertise are considered in establishing the preliminary civil penalty, the final civil penalty, and any mitigation thereof.

4. Determine how communications on HMTA enforcement can be improved, both within and outside the Department.

Communications on HMTA enforcement matters within the Department are already quite good. Technical representatives from the

various DOT agencies' hazardous materials programs meet monthly, and intermodal inspection programs are often used to address intermodal compliance problems.

Lawyers from the different agencies now confer as the need arises. However, regular meetings among lawyers from each of the enforcing agencies would be beneficial for comparing notes on common regulatory proposals and enforcement issues, interpretations with intermodal impact, legislative action, and administrative or judicial rulings under the HMTA. As noted in response #1, these meetings will begin this year and will be held semi-annually thereafter. Meetings of the Chief Counsels or senior enforcement attorneys will explore ways of improving the exchange of information across the modes, particularly with respect to case histories concerning companies or individuals that are chronic violators of HMTA requirements. A review of procedures to publicize the Department's enforcement program will also be made. Currently, significant enforcement actions are noted in a newsletter published by RSPA's Materials Transportation Bureau. The agenda for such meetings will also include:

- a review of each administration's enforcement performance for the previous six-month period;
- a discussion of significant cases, including any enforcement problems and referrals to the appropriate U.S. Attorney; and
- training needs for staff attorneys, particularly in the availability of Department resources for enforcement case work.

The Chief Counsel of RSPA, who already plays a coordinating role on many of these matters, will chair the meetings.

With respect to communications between the Department and outside agencies, DOT has in effect Memoranda of Understanding with the Environmental Protection Agency and the Nuclear Regulatory Commission for coordination of inspection and enforcement activity concerning hazardous waste transportation and the transportation of radioactive and nuclear materials, respectively. In addition, RSPA's State Hazardous Materials Enforcement Development (SHMED) Program has enhanced State efforts to develop and administer effective hazardous materials enforcement programs.

Senator PERCY. In closing, I just want to say to you all that even though I have some concern about the civil penalty policies, I frankly think that you could do a better job there, and respectfully suggest you do take a look at it to see if that particular area of the operation can be improved. I do want to really commend all of you and everyone at your departments for your respective roles. When you look at the big picture, the question is—the bottom line is—how safe is our transportation system? You have to always say it could be safer. We need to look at every aspect of it, but it is the safest in the world, comparing it with anyone else. It has never been safer than today. So that we want to just keep it that way, and that's the purpose of this hearing: To see that we try to achieve our own very high standards.

I thank you very much, indeed, for being with us today.

Mr. MARQUEZ. Thank you.

Mr. FABERMAN. Thank you.

[The prepared statements of Messrs. Marquez, Ivers, Mason, Faberman, and Tenley (with an addendum) follow:]

STATEMENT OF JIM J. MARQUEZ, GENERAL COUNSEL
DEPARTMENT OF TRANSPORTATION
BEFORE THE SUBCOMMITTEE ON ENERGY, NUCLEAR
PROLIFERATION AND GOVERNMENT PROCESS
COMMITTEE ON GOVERNMENTAL AFFAIRS
UNITED STATES SENATE
MAY 9, 1984

Mr. Chairman and Members of the Subcommittee:

Good morning. I am very pleased to appear before you today to discuss the Department of Transportation's program for civil penalty enforcement for hazardous materials violations. With me today are the Chief Counsels from several of our modal administrations. They are Edward P. Faberman, Acting Chief Counsel at the Federal Aviation Administration (FAA), John M. Mason, Chief Counsel of the Federal Railroad Administration (FRA), Donald L. Ivers, Chief Counsel of the Federal Highway Administration (FHWA), and George W. Tenley, Jr., Acting Chief Counsel of the Research and Special Programs Administration (RSPA).

Each Chief Counsel has prepared a statement describing the manner in which his respective agency conducts its civil penalty enforcement programs. In the interest of saving time, we would like to submit these statements for the record.

I would like to describe in summary fashion the steps involved in assessing and collecting a civil penalty for illegal hazardous materials transportation and then to outlines areas

the Department can explore to improve efficiency and effectiveness.

The Department of Transportation is, under the Hazardous Materials Transportation Act, the primary agency responsible for ensuring the safe transportation of hazardous materials. Although the assessment and collection of civil penalties for violations is very important, it is only one part of the Department's broad approach in assuring safety in commerical transportation. We develop and enforce overall standards for truck, rail and air safety; we issue guidelines for the packaging, labeling, loading and unloading of hazardous materials; and we coordinate our regulatory and enforcement activities with other Federal agencies. Moreover, the Secretary has made the maintenance and continued improvement of safety in all modes of transportation a primary goal of her administration. To that end, she has established an in-house Safety Task Force, chaired by Mr. Ivers, whose function is to examine means of improving safety in all transportation modes.

DOT's hazardous materials safety programs for rail, truck and air sectors has played a significant role in reducing the number of hazardous materials incidents in recent years. The individual statements of the Chief Counsels present a detailed picture of the current status of hazardous materials transportation for each industry. The overall figures indicate that improvements in the

safe transportation of hazardous materials have occurred across all modes. For example, the rail industry has shown remarkable and steady improvement in all safety indices, including those involving the transportation of hazardous materials. The number of hazardous materials incidents in the rail mode has been reduced from 1,327 in 1980 to 851 in 1983, and, over the same period, the number of rail cars releasing hazardous materials as a result of train accidents decreased from 173 to 62. Since 1980, none of these incidents has resulted in a death. In terms of highway safety, our records indicate that hazardous materials incidents have been declining since 1978, and that, on a mileage basis, bulk hazardous materials carrier accidents occur at about half the national average rate for all truck accidents.

With regard to the process of civil penalty enforcement under the Hazardous Materials Transportation Act, the Secretary has delegated most of the enforcement responsbilities for hazardous materials transportation to the modal administations. Each modal administration in turn implements its delegated authority in relatively similar fashion. Each administration conducts inspections and investigations of carriers, shippers or persons subject to its jurisdiction and, in cases where a violation is found, takes administrative steps against the violator, including the assessment and collection of civil penalties.

Although there are no uniform DOT guidelines for assessment and collection of penalties, it may be helpful to review briefly the approach of the Federal Railroad Administration, which is fairly representative of the method used throughout the modes.

The process is initiated by a field inspector's decision to cite a violation. The rail inspector's report of the violation, containing all of the information necessary for prosecution of the claim, is sent to the Chief Counsel's office for review. An attorney then determines whether the report is legally sufficient and, if so, what initial assessment is appropriate. The attorney uses FRA's initial assessment guidelines (a copy of which have been provided to the Subcommittee staff) and the statutory assessment criteria under the Hazardous Marterials Transportation Act to arrive at this initial determination. A Notice of Probable Violation, which summarizes the charges, and a copy of the violation report are then sent to the carrier or shipper.

Upon receipt of such notice, the respondent may opt for a formal administrative hearing or an informal response. The latter route is chosen in the overwhelming majority of cases. During the ensuing discussions, a respondent provides information on any factors he believes provide a defense or warrant mitigation. Mitigating factors include: new or remedial training programs, improved methods of operation, hiring of new personnel, discipline of employees responsible for the violation, capital investments

that foster compliance, and information on the respondent's ability to pay. Taking into account all major aggravating and mitigating circumstances and again relying on the guidelines to determine what upward or downward adjustiment may be appropriate, the FRA attorney recommends a final assessment to the Assistant Chief Counsel for Safety, who issues an Order Assessing Civil Penalty that reflects the major factors relied on in reaching the final penalty.

Once a settlement has been approved, a settlement agreement is prepared and signed. In the vast majority of cases, FRA, as do the other modal administrations, receives prompt payments of the settlement amounts. In those cases where payment is not forthcomming, the agency issues demands for payment, and the refers the matter to the Department of Justice for collection.

If a respondent elects to have a formal administrative hearing, the violation is considered in a full, evidentiary proceeding before an Administrative Law Judge. The AlJ's final order may be appealed to the Railroad Administrator. Review of the final agency decision may be sought in federal district court. Only two such formal hearings have been taken place at FRA for hazardous materials violations.

Within the overall Departmental hazardous materials enforcement effort, there is much common ground:

- As noted above, each operating administration has substantially similar procedural requirements.
- Although each program recognizes the need in appropriate cases to set penalties at a level that will serve to deter the particular violator as well as others in the particular industry, the sanctions available in the Act are used more as a tool for achieving compliance than for imposing punishment. In other words, the statute is deemed to have more of a remedial than punitive purpose.
- Because penalty assessment is recognized as a highly subjective undertaking, uniformity of treatment and adherence to the statutory assessment criteria are fundamental.

Notwithstanding the favorable safety record of hazardous materials carriers generally under existing DOT enforcement procedures, and the similarities noted above, we believe there may be some areas which warrant further study for ways to improve the efficiency and effectiveness of hazardous materials enforcement, both from the standpoint of our safety mission and our responsibility to insure that obligations owed to the Federal governement are paid:

- The Hazardous Materials Transportation Act requires that, in determining the amount of a penalty, the agency must take into account certain factors, including the nature and gravity of the offense, the degree of

culpability of the violator, any prior history of offenses, ability to pay and any other relevant factors. Although this exercise is, in large part, subjective, it is appropriate to explore the feasibility of uniformly defining, and, to the extent practicable, applying the statutory assessment criteria.

- We can encourage information-sharing among the various agency programs, so as to have a system that encourages uniformity in the Department's overall program.
- Examine whether our procedures for applying the Debt Collection Act and assessing interest and delinquent payment penalties can be made uniform.
- We can review the adequacy of the training and procedures used by the operating administrations to assure that they are appropriate in terms of the purpose of the Act and the distinct transporatation population each mode addresses.

This process of examining ways of increasing coordination and uniformity in the Department's enforcement efforts must take into account the needs of the operating administrations for some flexibility to tailor the hazardous materials program to the character of the respective industries they oversee.

CONCLUSION

Enforcement of the hazardous materials regulations is only one part, although a very important one, of the Department's comprehensive safety program. In general, the civil penalty enforcement efforts by the modal Administrations have significantly contributed to the recent and, in some cases, dramatic improvements we have seen in the transportation of hazardous materials. Each opperating Administration has integrated Hazardous Materials Transportation Act enforcement into its overall safety program for its particular mode of transportation. Nonetheless, the procedures and substantive approaches used are roughly similar. RSPA promulgates regulations under the Hazardous Marterials Transportation Act for the whole Department. These regulations are subject to review and concurrence by the Secretary. Further, the Department can look for ways to improve coordination. It may be an appropriate subject for the Safety Task Force to examine. Finally, while we are open to any suggestions that might improve the enforcement process, we believe that the basic structure and administration of our penalty assessment and collection efforts has improved safety compliance.

Mr. Chairman, this completes my prepared statement. My colleagues and I would be happy to respond to any questions the Subcommittee may have.

Statement of Donald L. Ivers
Chief Counsel
Federal Highway Administration
U.S. Department of Transportation
Before the Senate Governmental Affairs Committee

May 9, 1984

Mr. Chairman, Members of the Committee:

The Federal Highway Administration is pleased to appear as a part of this Department of Transportation panel to discuss the hazardous materials enforcement program as it applies to highway movements.

In order to understand the enforcement mechanism used by the Federal Highway Administration (FHWA) in carrying out our delegated responsibilities under the Hazardous Materials Transportation Act of 1974, it is useful to know something about the regulated highway transportation community.

There are over 200,000 business entities of record with FHWA's Bureau of Motor Carrier Safety (BMCS) as operating commercial vehicles in interstate or foreign commerce. Of this number, it is estimated that some 30,000 transport hazardous materials in such quantities as to require vehicle placarding. Furthermore, the BMCS is responsible for enforcing the Department of Transportation's hazardous materials regulations against shippers of hazardous materials by highway. These business entities subject to FHWA's enforcement authority range from sole proprietors to multinational corporations shipping thousands of shipments of hazardous materials daily or operating fleets including thousands of motor vehicles.

In the design of an enforcement strategy to cover such a large universe of carriers and shippers it is necessary to rely on a good deal of education, promotion, and voluntary compliance activities. While it is true that we share this enforcement responsbility with the States, the degree of sophistication of State efforts varies from quite high to none at all.

FHWA's enforcement policy may be characterized as serving a remedial purpose more than a punitive purpose. The underlying statutes and our policies require consideration of the nature and gravity of the offense, the degree of culpability, the previous compliance history, the size of the business firm, its financial status or the ability of the firm to stay in business, and any extenuating circumstances when assessing penalties and in the settlement of civil enforcement cases. We attempt to set civil penalties at a level that will obtain and retain a carrier's or shipper's interest in safety compliance.

At the present time, FHWA only has civil penalty authority for violations of the Hazardous Materials Regulations, 49 CFR Parts 171-179, and with regard to certain motor carriers, for violations of the Federal Motor Carrier Safety Regulations involving recordkeeping violations (e.g., the falsification of entries on records or the failure to maintain or retain records) (The latter civil penalty authority does not reach private motor carriers.) Current law does, however, permit FHWA to punish with criminal sanctions all types of motor carriers for all types of violations of the Federal Motor Carrier Safety Regulations. Criminal prosecution is often an unsatisfactory tool for inducing businessmen to obey safety regulations. Violations of safety rules are mainly a result of system failures

rather than acts of moral turpitude. FHWA encounters few cases in which a carrier deliberately sets out to operate in violation of the law. If appropriate criteria are met, the FHWA may submit for criminal prosecution cases involving violations of the Hazardous Materials Regulations against motor carriers and shippers of hazardous materials operating within the agency's authority.

It is a fair question to ask if hazardous materials transportation risks are growing, remaining steady, or declining. Our records indicate hazardous materials incidents have been declining since 1978, in terms of highway incidents reported to the Department. Also, in terms of our national roadchecks in 1982 and 1983, we saw a decided decline in hazardous materials-laden vehicles declared out of service from 11 percent to 6 percent. A data processing run on bulk hazardous materials carrier accidents indicates these vehicles have about half the national average for all truck accidents on a mileage basis. Our assessment is that our efforts, those of the States, and those of carrier management are reducing risks in highway transportation. Obviously, there is room for improvement, but we are trending in the right direction.

In the conduct of our program, we coordinate and cooperate with a large number of organizations, both within the DOT and outside of the DOT, including State counterpart agencies. The principal agencies in DOT are the Materials Transportation Bureau of the Research and Special Programs Administration, the Federal Railroad Administration, the Federal Aviation Administration, and the United States Coast Guard. Outside agencies include the Environmental Protection Agency, the Nuclear Regulatory Commission, the Bureau of Alcohol, Tobacco and

Firearms, and the U.S. Customs Service of the Treasury Department, the Food and Drug Administration, the Interstate Commerce Commission, the Occupational Safety and Health Administration, and others. We also work with carrier, shipper, and labor organizations in cooperative safety efforts.

With respect to the procedures employed by FHWA, we have two major types of enforcement proceedings involving the imposition of fines and penalties for violations of the DOT's regulations. These proceedings involve violations of the Federal Motor Carrier Safety Regulations, 49 CFR Parts 390-399, and violations of the Hazardous Materials Regulations, 49 CFR Parts 171-179. I will briefly describe each of these proceedings.

Hazardous Materials Proceedings

In accordance with the delegation of enforcement authority by the DOT (49 CFR 1.48 and 49 CFR 107), the FHWA is responsible for the enforcement of the Hazardous Materials Regulations primarily with regard to motor carriers transporting and shippers shipping hazardous materials by highway.

If the BMCS Safety Investigator, after conducting an investigation (i.e., a safety compliance audit of a facility of the carrier or shipper, a driver-vehicle examination, a complaint investigation, or an accident investigation), determines that the violations of the DOT's Hazardous Materials Regulations warrant prosecution, a documented investigation report is submitted through appropriate FHWA division and regional channels for approval. If the field offices reviewing the report concur with the submission, the documented investigation report with evidence is then forwarded, if appropriate, to the Operations Division, BMCS for review. Each field and operational level reviewing

this case makes recommendations regarding the proposed assessment and at times the violations to be cited. The case may then be transmitted to counsel for consideration. After reviewing the submission and recommendations, counsel contact the region to discuss the total assessment and specific violations. (If counsel determines that the case should be transmitted to the Department of Justice for criminal prosecution, the United States Attorney decides the fine to be requested.) When the claim letter is subsequently transmitted to the Director, BMCS, for signature, the Director is advised of the region's recommendations. The Director then signs the claim letter or returns the letter with a request that the assessment be changed or a particular count be deleted. Assessments are made in accordance with the statutory guidelines contained in 49 U.S.C. 1809 (i.e., financial status, past history, seriousness of violations and other factors). In accordance with the agency rules of practice for motor carrier safety proceedings, 49 CFR Part 386, the cited entity must either pay the full amount of the assessment or reply to the claim. The respondent may request a formal administrative hearing. Most of these cases are settled informally through the presentation of mitigating factors in writing or during settlement negotiations. Any settlement for any amount less than the initial assessment is subject to the approval of the Director, BMCS (he signs the settlement agreement). Settlement offers are discussed with the Regional Office prior to their submission to the Director, particularly if the offer of settlement is for an amount substantially less than that initially suggested by the Region.

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If the claim is not timely paid, the case is transmitted to the Department of Justice for collection. In most cases, assuming an adequate administrative record, there would be no de novo review in Federal court.

Federal Motor Carrier Safety Cases

Generally, violations of the Federal Motor Carrier Safety Regulations must be handled criminally unless they involve recordkeeping (falsification of record or failure to maintain records) by a common or contract motor carrier. In such cases those documented investigation reports determined to be legally sufficient to warrant prosecution are transmitted by Counsel to the United States Attorneys' offices for further proceedings. Civil cases are generally initiated by the issuance of a notice of claim assessing an initial penalty of $500 per violation. After reply and settlement negotiations these cases are settled informally. If the case is not paid in full or if no settlement is possible, the case is submitted to the Department of Justice for trial. Again, settlement amounts are discussed with the Regional Director, Office of Motor Carrier and Highway Safety, and in special circumstances with the Director, BMCS. Settlement agreements are signed by the program officials.

If hazardous materials are being transported at the time a Federal Motor Carrier Safety Regulation violation occurs, we can cite 49 CFR 177.804 and the Federal Motor Carrier Safety Regulations and use civil penalty authority of 49 U.S.C. 1809.

On occasion, cease and desist orders or "consent" orders are obtained against cited respondents in lieu of or in addition to settlement for a monetary penalty. Such orders require the respondent to take specific measures to ensure future compliance with applicable DOT regulations.

I will be pleased to respond to questions at the appropriate time.

TESTIMONY OF
JOHN M. MASON
CHIEF COUNSEL, FEDERAL RAILROAD ADMINISTRATION
BEFORE THE SUBCOMMITTEE ON ENERGY, NUCLEAR PROLIFERATION, AND GOVERNMENT PROCESSES OF THE COMMITTEE ON GOVERNMENTAL AFFAIRS
UNITED STATES SENATE
MAY 9, 1984

Mr. Chairman. It is a pleasure to appear before the Subcommittee this morning on so important a topic as the safe transportation of hazardous materials. The prevention of hazardous materials releases from rail cars, especially those caused by train accidents, is one of FRA's major priorities.

Since 1980, not a single death has resulted from the release of hazardous materials from a railroad car. Indeed, between 1980 and 1983, we reduced the number of rail cars releasing hazardous materials as a result of train accidents from 173 to 62. This is clear evidence of a dramatic turn-around in the transportation of hazardous materials by rail. Moreover, this excellent record is typical of and related to a welcome trend cutting across all areas of railroad safety. For example, the total number of reported train accidents has steadily decreased from a high of 11,277 in 1978 to an all-time low of 3,906 in 1983. Since most trains include at least one shipment of hazardous materials, significant safety improvements throughout the nation's railroad system -- to track and rolling stock for example -- have made their

movement far safer. The following table summarizes these improvements:

	1978	1983
Train Accidents	11,277	3,906
Accidents per million train miles	15	7
Accidents with HazMat release	138	52
Cars releasing HazMat in accidents	232	62
HazMat incidents in rail mode	1,191	851
Deaths in rail HazMat incidents	26	0
Injuries in rail HazMat incidents	482	69

AN OVERVIEW OF FRA'S RAIL SAFETY PROGRAM

The Federal Railroad Safety Act of 1970 provides the Department with rulemaking, enforcement, inspection, and investigatory powers in all areas of rail safety. Under the Safety Act, FRA has issued rules covering a wide variety of subjects, including track safety, freight car maintenance, railroad operating rules, rear end marking devices, and safety glazing. FRA also enforces a number of older rail safety laws that deal specifically with power brakes, safety appliances, signal systems, locomotives, and hours of service. Finally, FRA enforces the Hazardous Materials Transportation Act (HMTA) in the rail mode. Although rulemaking authority under the HMTA resides in the Department's Research and Special Programs Administration, FRA works very closely with RSPA on the development of rail-specific rules, such as the recent series of rules requiring the retrofit of various hazardous materials tank cars.

FRA's Office of Safety is responsible for implementation of our safety program. That office engages in a wide variety of activities, all of which are designed to prevent train accidents and casualties. Those activities include: inspection of railroad and shipper facilities, equipment, records, and operations; system-wide assessments of railroads' safety programs and performance; consultation with carrier and shipper officials to educate them on their regulatory duties and to gain commitments to make needed improvements; preparing written violation reports, where that route appears useful in encouraging compliance, and sending them to my office for legal review and penalty collection; initiating proposals for regulatory changes; investigating major rail accidents to determine probable cause; and meeting with emergency response, employee, and citizen groups to explain rail safety regulations.

The theme of this program is the prevention of unsafe conditions. A central goal is the prevention of hazardous materials releases, a goal that entails far more than enforcement of just the hazardous materials regulations. The leading causes of train accidents involving hazardous materials releases are track defects, equipment defects, human error, and a variety of random events not constituting a violation of any existing law. Accordingly, a very large portion of FRA's safety resources are devoted to promoting compliance with track, equipment, and operating practice regulations on the major hazardous materials routes, and in determining the causes of hazardous materials accidents so that regulatory or other

action can be taken to prevent their recurrence. Therefore, any inquiry narrowly focused on only the penalties FRA collects for violations of the hazardous materials regulations will miss the great bulk of FRA's efforts devoted to safe transportation of hazardous materials.

FRA'S ENFORCEMENT PROCESS

Just as enforcement is only one element of FRA's safety program, so civil penalties are only one weapon in its enforcement arsenal. In recognition that civil penalties are poorly designed to address imminent hazards, Congress has, in the Safety Act, provided FRA the power to issue emergency orders to abate situations involving a hazard of death or injury. FRA has issued eleven such emergency orders since 1970, most of them dealing with hazardous materials transportation. The Safety Act also provides FRA with the power to seek to enjoin violations of the safety laws. The HMTA contains specific relief provisions that FRA could use to supplement its Safety Act authority to restrain hazardous materials violations or address imminent hazards. The HMTA also contains criminal penalty authority for willful violations. Thus, FRA has ample power under existing law to deal with those situations in which it must deliver a faster and harder enforcement punch than civil penalties are capable of providing.

Civil penalties, nevertheless, are very important in promoting regulatory compliance. Setting aside for a moment the peculiarities applicable to hazardous materials cases, the civil penalty process generally works as follows: The first step is a decision by an FRA safety inspector in the field that a carrier or shipper action warrants a civil penalty. The inspector drafts a report containing all evidence that could be used to support a violation action and forwards it to my office, where we review it for legal sufficiency. A few reports are returned to the field for corrections or additional information or because of insufficient proof.

Some time after transmittal to the respondent, the FRA attorney negotiates a settlement of the case. Negotiations usually entail discussion of cases by FRA attorneys, Office of Safety staff, and attorneys and technical experts from the carrier or shipper. Among the factors considered are the remedial action taken and the gravity of each violation. Those that caused or created a serious risk of a derailment, hazardous materials release, passenger train accident, or employee injury are given special attention in the settlement process. Having received information on all aggravating and mitigating factors during the negotiations, the attorney is in a position to recommend a settlement to the Assistant Chief Counsel for Safety. Once a settlement has been approved by the Assistant Chief Counsel or, in very extraordinary cases, by me, a settlement agreement is prepared and signed.

Except for a relative handful of cases delayed by bankruptcy proceedings, FRA receives prompt payments of the settlement amounts. We are well aware of the importance of efficient debt collection, and our internal accounting and follow-up procedures have been refined in recent years to ensure prompt payment of civil penalty debts. My office receives a monthly listing from FRA's accounting office of any overdue debts, and we move quickly to obtain payment.

Of the thousands of violations cited by our field inspectors every year, a small number either caused or created a serious risk of a derailment, death, injury, or hazardous materials release. Under a system established in June 1982, such violations are given top priority treatment, which entails a very speedy review in my office, the issuance (in an average of just two weeks after receipt of the reports) of a special letter to the respondent indicating the seriousness of the violations, and a demand for a prompt response. An effort is then made to settle these claims within a short time after transmittal.

THE HAZARDOUS MATERIALS ENFORCEMENT PROCESS

Hazardous materials cases make up a significant portion of FRA's total enforcement workload. Of over $2.4 million collected in penalties in 1983, $439,225 were for violations of the hazardous materials regulations. Because of the unique

statutory scheme of the HMTA and the importance FRA accords these cases, FRA uses some special procedures to review and process them.

Violations under the HMTA also begin with the field inspector's decision that conduct warranting a civil penalty has occurred. Based on his report, my office determines an initial penalty assessment by weighing the facts presented against the six assessment criteria found in the HMTA itself. To ensure uniform application of these criteria, the attorneys refer to an FRA memorandum that interprets them. Because the statute mandates use of these criteria in every case, a penalty schedule setting a flat amount for each particular regulation violated would be inappropriate.

Instead, we have developed internal HMTA guidelines that set benchmarks to be used as starting points in the penalty determination. The purpose of these guidelines is to differentiate among the various violations according to their relative severity. Our initial assessments vary, for example, for violations such as incorrect shipping papers, misplacement of placarded tank cars, failure to secure the fittings of a tank car, and so on. FRA believes that Congress, by permitting penalties "not more than" $10,000 per violation, intended to have that maximum penalty used for the most egregious violations. My staff has been able to identify 13 violations for which we initially assessed the maximum penalty in the last three fiscal years, but this reflects only such assessments

made in single-count cases. Most of our cases include multiple counts, however, and we have not had time to conduct the laborious manual review necessary to determine how often we assessed the maximum in them.

Starting with the guideline amount, my office adjusts the penalty upward or downward depending on the presence of any of the mitigating or aggravating circumstances covered by the statutory criteria. This procedure guards against arbitrariness at the initial assessment stage. FRA was, in fact, commended for its rational and uniform approach to determining both initial and final assessments in the study of HMTA penalties done for DOT in 1980 by Professor Diver. My staff is currently computerizing all of our hazardous materials penalty data. When this process is completed, rationality of assessments will be further enhanced, especially in the area of the respondent's history of compliance. Completion of our current effort to update and revise the guidelines will coincide with completion of this computerization project.

Having determined the appropriate initial assessment, we issue a Notice of Probable Violation that requires a response within 30 days. The HMTA provides each respondent the right to a hearing prior to final assessment of a civil penalty, and FRA has adopted procedures for formal trial-type hearings at 49 CFR Part 209. However, the overwhelming majority of respondents choose to present a response informally, either in writing, in person, or both.

The ensuing discussions with the respondent's counsel and other corporate officials nearly always bring to our attention mitigating factors not available at the time of the initial penalty assessment. For example, the respondent may have initiated new or remedial hazardous materials training programs for its employees, established new and improved operating methods or billing procedures, hired new personnel to improve regulatory compliance, made capital investments designed to correct unsafe conditions, or disciplined employees or officials who were responsible for the violations. The respondent might also furnish financial data relevant to its ability to pay a proposed penalty.

In one case, FRA negotiated a significant reduction of rather large penalties against a small, first-offender railroad in return for the railroad's sponsoring training sessions for all of its employees and for all emergency response personnel along its route. FRA participated in those sessions. Respondents often seek and receive suggestions from FRA's hazardous materials experts on how to make further improvements. The civil penalty stick provides us with leverage to achieve our underlying goal -- safe operating practices and compliance with the regulations.

Based on these discussions, we issue an Order Assessing Civil Penalty, requiring payment of the final penalty amount and stating the major aggravating or mitigating factors relied on in reaching it. We have supplied documents to the Subcommittee staff concerning one case in which the statutory

maximum of $10,000 was collected for a single violation. The offense consisted of cutting off in motion, rather than slowly shoving to rest, a tank car loaded with hydrocyanic acid, an extremely lethal poison gas. No release occurred, but the action was willful, coming after a warning from an FRA inspector. The railroad paid $8,400, and the individual with primary responsibility was assessed the remaining $1,600.

With the exception of having to seek the approval of bankruptcy courts for the payment of some final assessments, FRA has not had to sue to collect on any of its final orders. Ordinarily, payment is due within 30 days of the order's issuance, although, in consideration of the statutory assessment criteria concerning ability to pay and effect on ability to continue in business, payment in installments has been permitted in a very few cases. In accordance with government-wide debt collection practice, the order states that failure to pay the penalty when due will result in imposition of interest at the going rate as determined by the Department of Treasury.

Based on our experience over the eight years civil penalties for hazardous materials violations have been available, we have concluded that improved compliance is most readily encouraged by a careful combination of (i) periodic inspections, (ii) consultations with carriers and shippers, (iii) citing violations where compliance levels are unsatisfactory, and (iv) assessment of penalties that are commensurate with the severity of those violations and

reflective of corrective actions taken by the respondent. We believe we do a good job of sizing the penalty to fit the offense. We also believe that the dramatic improvements in rail transportation of hazardous materials in recent years are attributable, at least in part, to the fairness and effectiveness of our hazardous materials enforcement program.

HAZARDOUS MATERIALS INCIDENTS OF CONCERN TO THE SUBCOMMITTEE

Subcommittee staff members have previously inquired about the use of hazardous materials penalties in connection with three hazardous materials incidents in recent years. Before explaining those incidents, I would like to emphasize that FRA views its entire enforcement program as preventive in nature. Imposition of penalties after serious accidents is too little, too late. I have explained what I believe to be an excellent enforcement program, and would like simply to caution against judging that program on the strength of these incidents. Nevertheless, I believe they provide good illustrations of many of my earlier points.

A Louisville and Nashville Railroad train derailed in Waverly, Tennessee, at about 10:25 p.m. on February 22, 1978. The derailment was apparently caused by a broken wheel on a gondola car. The wheel broke as a result of thermal stress induced by a hand brake that had been left on when the car was placed in the train en route. Had the intermediate air brake

test been properly performed at that point, the applied hand brake would presumably have been released. However, the National Transportation Safety Board also concluded that, had the broken wheel been of a lower carbon content, it probably would not have cracked.

Two of the cars derailed were tank cars loaded with liquefied petroleum gas. After sitting at the derailment site for over 36 hours, one of those cars exploded on February 24, sending a fireball over a wide area, killing 16 people and injuring 43. The cause of this explosion, according to investigators, was that the tank car had been gouged by a wheel of another car during the derailment. The resulting crack eventually gave way, releasing the car's pressurized contents, which found an undetermined source of ignition. The other loaded tank car, only a few yards from the one that exploded, remained intact even through the explosion and fire.

FRA filed three hazardous materials violations against the shipper of the LPG cars. Two counts were for failure to certify the shipping papers on each car; FRA assessed and collected $2,000 for each of these counts. The third count was for an improper stencil on the LPG car that remained intact. Information developed during discussions with the shipper indicated to the attorney who handled that case that FRA would be unable to prove that the car was not properly stencilled when offered for transportation, so that count was terminated.

Waverly illustrates an important truth: most serious hazardous materials accidents in the rail mode are caused by

factors other than violations of the hazardous materials regulations. FRA's response to Waverly was swift and decisive: Emergency Order No. 7 banned the use of high carbon wheels such as the one that broke in the derailment. Thus, what we learned in the Waverly context was quickly used to prevent similar disasters.

Your staff has also inquired about the derailment at Livingston, Louisiana, on September 28, 1982, that resulted in 6 minor injuries and the evacuation of about 3,000 persons. Contents of some of the 27 derailed hazardous materials cars were released, resulting in a fire, explosion, and vapor cloud. The train was being operated by an untrained clerk-operator, not a member of the crew, operating without authority. The engineer and brakeman had alcoholic beverages prior to departure and possibly enroute. The apparent cause was improper train handling after an undesired emergency brake application; a qualified engineer would presumably have been able to bring the train to a halt without derailing.

While those practices were improper, FRA investigators found no violations of any rail safety laws or rules in their thorough investigation after the derailment. The suspected use of alcohol provided further evidence of the need for FRA's ongoing study of the problem of drug and alcohol abuse in the rail industry as it affects rail safety. As a result, we issued an Advanced Notice of Proposed Rulemaking on the subject last summer, held hearings last fall, and we plan to issue a Notice of Proposed Rulemaking on the subject in the very near future.

On July 30, 1983, a tank car that had just been loaded with vinyl chloride by Formosa Plastics at its Baton Rouge, Louisiana plant released some of its contents, resulting in a fire and explosion that injured two workers and caused the evacuation of 700 persons. It appears that the cause was the disconnection or rupture of a loading line while the car's eduction lines were still open. The product that was released into the atmosphere exploded after encountering an unknown source of ignition. Our field inspectors concluded that they lacked sufficient evidence on which to base violation citations against either the shipper or the tank car builder.

From the original investigation it appeared that, had the car's excess flow check valve been properly installed by the tank car builder, it would have been activated when the loading line was disconnected, thereby stemming the flow of product from the car. Subsequently, our Office of Safety concluded that the valve was not designed to be activated merely by the disconnection of the loading line. Regardless of whether the installation of this valve was a contributing factor to the Formosa Plastics incident, the important point is that FRA has pursued the subject by inspecting the installation of excess flow check valves on similar cars. Since FRA's inspections have revealed more installation deficiencies, it has worked with the tank car builder and the Association of American Railroads to develop a more extensive testing program and to inform those using the cars of the potential problem. FRA is monitoring this situation very closely and will take any action necessary to resolve it.

CONCLUSION

Enforcement of the hazardous materials regulations is a very important part of FRA's comprehensive railroad safety program. We believe that our enforcement of the hazardous materials regulations and other laws that impinge on hazardous materials safety has played a significant role in the recent and dramatic improvements in the rail transportation of hazardous materials. Furthermore, we believe that FRA's existing hazardous materials enforcement process is structured and administered so as to assess penalties sufficient to bring about improved compliance. Finally, we believe that our enforcement tools other than civil penalties provide us with ample authority to address the most imminent threats or persistent patterns of violations in the hazardous materials area.

Mr. Chairman, this completes my prepared statement. I would be happy to respond to any questions the Subcommittee may have.

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STATEMENT OF EDWARD P. FABERMAN, ACTING CHIEF COUNSEL, FEDERAL AVIATION ADMINISTRATION, BEFORE THE SENATE COMMITTEE ON GOVERNMENTAL AFFAIRS, SUBCOMMITTEE ON ENERGY, NUCLEAR PROLIFERATION, AND GOVERNMENT PROCESSES, CONCERNING PENALTIES FOR TRANSPORTING HAZARDOUS MATERIALS. MAY 9, 1984.

Mr. Chairman and Members of the Subcommittee:

I appreciate the opportunity to describe for you the processes we follow in the Federal Aviation Administration for determining, imposing, and collecting civil penalties for the illegal transportation of hazardous materials.

As you know, the FAA is responsible for enforcing the regulations pertaining to carriage of hazardous materials by air. The safety record of transporting such materials by air has been quite good, with no fatalities since the four deaths reported in 1974. We have also seen a steady decline in hazardous materials-related incidents in recent years, suggesting that the regulations and their enforcement are meeting their intended safety objectives. To check compliance with these regulations and to find violations, FAA civil aviation security inspectors conduct both scheduled and unscheduled ramp and warehouse inspections. When a possible violation is discovered, the inspector is responsible for compiling necessary evidence of the violation and forwarding it through regional supervisory channels to our Civil Aviation Security Office in Washington, and then on to the Chief

Counsel's Office for legal action. The initial field inspector proposes a recommended level of civil penalty, setting forth the sections of the regulations alleged to have been violated. At any step of the review process, the amount of penalty sought may be modified; similarly, changes may be made in the alleged regulatory violations.

The level of civil penalty proposed is based upon the guidelines set forth in 49 USC 1809(a) directing that we take into account "the nature, circumstances, extent, and gravity of the violation committed and, with respect to the person found to have committed such violation, the degree of culpability, any history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice may require." Naturally, to some extent these factors are subjective. In order to preserve the government's legal remedies, all possible violations are typically included. During the review process, as in any legal proceeding, it may be determined that inadequate evidence exists to support some of the alleged regulatory violations. This involves a careful weighing of the evidence, the witnesses, the basis of the violations, as well as the cost of proceeding with the case. Consequently, for these kinds of reasons, our review process permits reviewing officials to propose modifications to the level of penalty initially recommended by the field inspector.

The Chief Counsel's Office has the ultimate authority to determine the level of sanction to be sought.

Once a decision has been reached concerning the level of a proposed civil penalty, a notice of proposed civil penalty--setting forth factual allegations and alleged regulatory violations--is sent to the purported violator. That individual is offered the opportunity for an informal conference; to respond in writing to the proposed civil penalty; to pay the proposed assessment or to offer a lesser amount citing mitigating circumstances; or to request a hearing.

Hearings are held before impartial hearing officers. A hearing officer may set aside, modify, or affirm the FAA's proposed civil penalty. Either party may appeal the order of the hearing officer to the Federal Aviation Administrator who issues the final order of the agency. If the hearing officer's order is not appealed, then that becomes the final agency order and that penalty, if any, is assessed against the violator.

If an individual does not pay an assessed penalty, the FAA issues a demand letter to the individual, and may follow-up with a second letter demanding payment. If payment is not forthcoming, in accordance with the statute, the civil penalty is referred to the appropriate U.S. Attorney for collection in U.S. District Court. This is not always the best use of

government resources, however. Therefore, some cases are settled at that point. When we encounter cases in which payment would prove a hardship, if appropriate, we have arranged with these individuals for a schedule of payments, committing such agreements to writing in the form of promissory notes.

Before closing, let me provide you with a general idea of the number of cases with which we deal in the FAA. Last year, there were 67 cases in which the FAA proposed civil penalties for hazardous materials violations. Settlements were reached in 34 of those cases. For those cases that we settled, we initially proposed civil penalties amounting to $93,500. Civil penalties in the amount of $74,150 were actually assessed and collected in behalf of the government. Therefore, the amounts we settled for equalled 79% of the amounts we originally proposed as civil penalties, and yielded an average civil penalty of $2,127. During that same time, we also conducted one hearing. The FAA's proposed civil penalty of $2,500 was upheld by the hearing officer in that case.

Mr. Chairman, that completes my prepared statement. I would be pleased to respond to questions you may have at this time.

TESTIMONY OF GEORGE W. TENLEY, JR.
ACTING CHIEF COUNSEL, RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION
BEFORE THE SUBCOMMITTEE ON ENERGY
NUCLEAR PROLIFERATION, AND GOVERNMENT PROCESSES
OF THE SENATE COMMITTEE ON GOVERNMENTAL AFFAIRS

I am pleased to appear before the subcommittee today to discuss the administration of the RSPA's civil penalty enforcement program under the Hazardous Materials Transportation Act of 1974 (HMTA) (49 U.S.C. 1801 et seq.).

My response to the Subcommittee's invitation to appear, is provided in the manner outlined by the Subcommittee in the invitation.

I. DETERMINATION OF A CIVIL PENALTY

Within the RSPA, the hazardous materials enforcement program (historically focused primarily on manufacturers, reconditioners, and retesters of containers used to ship hazardous materials) is administered by the Materials Transportation Bureau's (MTB) Office of Operations and Enforcement (OOE). Based upon inspection reports resulting from on-site field inspections, a preliminary civil penalty amount is established at the branch chief level and above.

The principal determining factors in establishment of the preliminary or proposed civil penalty are: consistency with prior cases involving the same or similar violations; and the assessment criteria prescribed in Sec. 110(a) of the HMTA (49 U.S.C. 1809), as implemented in our procedural regulations at 49 CFR § 107.331. Of course, at the time of the fixing of the proposed civil penalty amount, the alleged violator has not had the opportunity to respond to the agency's allegations that form the factual premise for the civil penalty. Nonetheless, the statutory criteria must be considered, as a practical matter, at the time the proposed penalty is determined because the final penalty can be assessed only after the agency has applied the criteria to the facts of the case.

II. IMPOSITION OF A CIVIL PENALTY

The civil penalty assessment process is begun through issuance, at the division level within OOE, of a Notice of Probable Violation to the alleged violator. The Notice contains (1) a narrative statement of the facts upon which the alleged violations are based; (2) a recitation of the alleged violations, with specific reference to requirements of the Hazardous Materials Regulations; (3) a preliminarily assessed civil penalty of a specific amount; and (4) a description of the respondent's procedural rights and obligations.

Once the respondent has selected a response option - payment of the proposed civil penalty, informal written response (including opportunity for an informal conference), or formal adjudicatory hearing on the record - the assessment of the civil penalty is a process made up of three components: (a) the quality of the evidence in light of the respondent's information and arguments; (b) the statutory assessment criteria; and (c) weighing the degree to which compliance has been achieved.

We believe the purpose of the assessment criteria is to give RSPA the flexibility necessary to achieve compliance with the HMTA and the Hazardous Materials Regulations. We think this purpose is proper. We would note, however, that these criteria do not generally result in the assessment of civil penalties at or near the statutory maximum. By way of illustration, a substantial number of cases to date, perhaps a majority, conform to a general profile - a small business, having limited net income, dealing with a DOT-regulated container that has not failed (or that has failed in a manner that has not caused injury or damage), not intentionally violating the regulations, and which has not been inspected previously by MTB. Under these circumstances, the assessment of civil penalties approaching the $10,000 maximum per violation is neither feasible nor in conformance with proper considerations of due process.

The application of the assessment criteria to the cases brought by OOE, has resulted in mitigation of the proposed penalty in nearly 90% of those cases. Within the current statutory framework, that mitigation record is appropriate.

III. COLLECTION OF A CIVIL PENALTY

The order issuing a civil penalty is the agency's initial attempt at collecting the penalty, contingent on the violator's right to appeal the Order to the Director, Materials Transportation Bureau. If an appeal is made, and that is the rule in the majority of cases, the decision of the Director to uphold a civil penalty constitutes the formal agency final demand for payment.

Should the violator refuse that demand (and any subsequent demand the agency may make), the case is referred to the Justice Department for collection in the appropriate U.S. District Court, pursuant to Sec. 110(a)(2) of the HMTA (49 U.S.C. 1809(a)(2)). Upon receipt of the case by the pertinent U.S. Attorney's Office, the Justice Department will make a formal demand for payment before proceeding to suit. In the seven and one-half years of the hazardous materials enforcemement program in RSPA, we have referred nine cases to the Justice Department and have collected in seven of the eight cases that have been closed, without resort to suit (in one case RSPA was sued by the violator, and was successful in its counterclaim for the amount of the civil penalty). Of the remainder of our total of 110 cases involving civil penalty assessments, we collected civil penalties in 95 through our own efforts without involving the Justice Department.

ADDENDUM TO TESTIMONY

The hazardous materials enforcement program of RSPA's Materials Transportation Bureau (MTB) utilizes the services of seven full-time hazardous materials compliance specialists covering the Nation from DOT headquarters in Washington. Operating under delegation from the Secretary (49 CFR § 1.53), MTB's Office of Operations and Enforcement (OOE) has primary jurisdiction over manufactuers, reconditioners, retesters, and rebuilders of non-bulk containers for hazardous materials.

As the program has evolved over seven and one-half years, two principal enforcement policies have emerged:

- o The enforcement effort must be directed in a systematic way to important cases whose initiation, prosecution (primarily administrative), and completion will have a direct relationship with improved safety.
- o In view of obvious resource limitations, there is a strong need to stimulate broader enforcement coverage through involvement of State programs, incorporating the Federal regulatory scheme.

I. DIRECTION OF THE ENFOFCEMENT EFFORT

The philosophy of the RSPA program is to use the civil penalty as a means to achieve compliance. Consequently, in the usual case where a container failure has not caused death or injury or where a course of conduct demonstrates no serious or

continuing disregard for safety, the agency seeks first to achieve compliance in the given case, second to deter both the violator and others similarly situated, and third, to penalize the violator.

As the enforcement program has evolved, we have established a Federal presence through inspection in each of our constitutent sub-groups (e.g., manufacturers of steel drums, plastic pails, fiberboard boxes, compressed gas cylinders, etc.). In many cases, this presence resulted in enforcement cases, the vast majority of which led to civil penalties that were well below the statutory maximum of $10,000 per violation. But we consider that appropriate, given the statutory assessment criteria and the nature of the cases, when viewed in a safety environment that has been steadily improving since adoption of the HMTA. Utilizing compliance as the focus of the enforcement effort has enabled us to develop important dialogues in all of our constituent areas during these formative years.

This level of development having been reached, it is now time to begin to seek out the difficult compliance problems that require a multi-modal approach under the leadership of one agency. Our recent initiative, for which we are seeking additional resources in FY 1985, establishes a multi-discipline cadre of RSPA enforcement personnel to respond to problems that cross geographic, jurisdictional, and subject matter boundaries. As we have seen with our prior effort, we believe the HMTA's sanction provisions (including the use of compliance orders in lieu of or in addition to civil penalties) are effective in meeting the mandates of the HMTA.

II. FEDERAL/STATE RELATIONSHIP

In order to enhance our overall compliance and enforcement presence, RSPA has effectively utilized the willingness of several States to

aggressively address hazardous materials safety through enforcement. Under RSPA's State Hazardous Materials Enforcement Development (SHMED) Program, 25 States receive contract funds to enhance their efforts to develop and administer an effective hazardous materials enforcement program. When this Program lapses in 1987 (no new funding is to be provided after this fiscal year), each participating SHMED State, and nearly all other States as well, will have been approved under the new motor carrier safety assistance program of the Surface Transportation Assistance Act of 1982. Under that program, DOT's Bureau of Motor Carrier Safety provides grants to the States to strengthen their enforcement of all truck safety standards, including that relating to hazardous materials. This will further increase the overall hazardous materials enforcement presence.

The effectiveness of the SHMED program, and an example of State activity which clearly enhances the overall safety enforcement effort, can be seen in the Illinois hazardous materials program. Attached are materials relevant to the Illinois program, and they demonstrate what we consider to be a model program.

THE ILLINOIS STATE PROGRAM

I. SCOPE

The Illinois Department of Transportation (IDOT) is designated as the "lead agency" within the State in the Research and Special Programs Administration's State Hazardous Materials Enforcement Development (SHMED) program. It is IDOT's responsibility to coordinate activities with other State agencies, i.e., Illinois Commerce Commission (ILL.CC) and the Illinois State Police (ISP), and to supply the necessary effort required by the State program. The Illinois contract provides for a three-year program which began in FY 82, for a total amount of $180,000.

The basic hazardous materials transportation safety enforcement program was in existence in Illinois prior to FY 82. The intent and purpose of the Illinois program under the SHMED program was and still is to expand and modify its program by implementing a comprehensive hazardous materials transportation safety enforcement plan. It is IDOT's express authority to administer and enforce the provisions of the Illinois Hazardous Materials Transportation Act and to adopt, administer, and enforce the regulations issued under that act. IDOT's comprehensive regulatory and enforcement authority over the transportation of hazardous materials by highway as defined by the U. S. Department of Transportation includes loading, unloading, and storage incidental to transportation. The State of Illinois has adopted the federal hazardous materials regulations, 49 CFR Parts 100-199, and the federal motor carrier safety regulations, 49 CFR Parts 390-397, applicable to transportation by highway. The State of Illinois' hazardous materials transportation safety enforcement plan has been a role model for the 24 sister states participating in the SHMED program. The hazardous materials

enforcement plan has provided Illinois a program for enforcement of the federal rules, regulations, standards, and orders applicable to hazardous materials transportation, thus establishing a vital segment of a nationwide effort to promote the safe transportation of hazardous materials through the prevention of accidents due to the violation of the safety standards.

II. Highlights of Illinois Activities under the SHMED Program

- Illinois conducted the Third Hazardous Materials Enforcement Course, for state enforcement personnel.

- IDOT's staff members attended a three-day Hazardous Materials Awareness program presented by the Colorado Training Institute.

- ILL.CC inspectors attended a workshop on radioactive materials in preparation for the September 1984 movement of spent nuclear fuel to Morris, Illinois.

- IDOT representatives established a Hazardous Materials Outreach (HMO) program designed to be an ongoing activity through which the Department is attempting to "export" its experiences in an effort to help other states develop or improve their hazardous materials enforcement programs.

- The ISP has conducted Hazardous Materials Inspection Surveys to determine the number of trucks transporting hazardous materials and the percentage of trucks that were in violation of the transportation regulations. The results of the survey were:

  5,319 trucks stopped

  321 trucks found to be transporting hazardous materials

  104 shipments in violation of the hazardous materials regulations.

- Equipment - Digital dosimeters and Ludlum monitors for use in radioactive materials inspections were purchased for the inspection/enforcement program.

- Illinois has prepared a pamphlet to demonstrate the comprehensive inspection/escort procedures for irradiated nuclear fuel shipments through the State.

- Illinois has been submitting to the U.S. Department of Transportation examples of state penalty actions concerning the Hazardous Materials Regulations (see attachment).

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Attachment

B. EXAMPLES OF STATE PENALTY ACTIONS CONCERNING THE HAZARDOUS MATERIALS REGULATIONS

The penalty actions that are shown in this issue were completed by the Illinois Department of Transportation. Illinois DOT is a participant in MTB's State Hazardous Materials Enforcement Development Program (SHMED).

Company	Offence	Penalty
ABF Freight System, Inc. (Carrier)	Transporting poisonous liquid in a vehicle that contained a dough improver which is a foodstuff compound intended for human consumption.	$2,000.00 (ILL DOT)
Apple Lines, Inc. (Carrier)	Failure to affix a "FLAMMABLE SOLID W" placard to a motor vehicle indicating that it contained a flammable solid that presents danger when wet.	$1,500.00 (ILL DOT)
Baggett Transportation Company of Alabama (Carrier)	Transporting Class A Explosives without a written route plan.	$750.00 (ILL DOT)
Bork Transportation, Inc. (Carrier)	Transporting gasoline in a cargo tank which did not have a heat-activated safety device in one of the tank's four discharge valves.	$750.00 (ILL DOT)
BN Transport, Inc. (Carrier)	Failing to properly placard a motor vehicle used to transport Class B Explosives.	$1,750.00 (ILL DOT)
Brown Brothers Cartage Company of Chicago (Carrier)	Failing to properly secure of Flammable Liquids and Corrosive materials against movement while in transit.	$1,000.00 (ILL DOT)
EE-JAY Motor Transports, Inc. (Carrier)	Transported gasoline in a cargo tank without heat-activated safety devices on the discharge valves.	$3,750.00 (ILL DOT)

Gateway Petroleum, Inc. (Carrier)	Failure to properly placard a cargo tank used to transport fuel oil.	$1,000.00 (ILL DOT)
Francis J. Henery, Inc. (Carrier)	Transporting Class A Explosives without a written route plan.	$750.00 (ILL DOT)
Matlack, Inc. (Carrier)	Operating a cargo tank used to transport a flammable gas that did not have an operable remote emergency control for the product discharge valve.	$1,250.00 (ILL DOT)
Pacific Intermountain Express Company (Carrier)	Failing to properly placard a motor vehicle used to transport radioactive materials.	$1,500.00 (ILL DOT)
Seco Trucking Company (Carrier)	Transporting Class A Explosives over a route which did not avoid going through or near populated areas and failure to furnish the driver instructions on procedures to be followed in the event of a emergency or delay.	$2,000.00 (ILL DOT)
Viking Chemical Co. of Rockford (Shipper/Carrier)	Failure to properly placard a motor vehicle used to transport hazardous materials.	$2,500.00 (ILL DOT)
Wayfare Trucking, Inc. (Carrier)	Failure to affix a "Flammable SOLID W" placard to a motor vehicle that contained a material that presents a danger when wet.	$2,000.00 (ILL DOT)

Senator PERCY. Our final witness is Mr. Lee Thomas. Mr. Thomas is responsible for carrying out two very important aspects, the Resource Conservation and Recovery Act and the Hazardous Waste Regulatory Program.

Mr. Thomas, I have a very high regard for Mr. Ruckelshaus and the management team he has assembled at EPA. I think he is one of the most competent, educated, and able men I have ever worked with in Government. I have a great respect for him and admiration. You and your colleagues are doing an outstanding job restoring the integrity, morality, and quality of the work product at your agency. I would appreciate your delivering that message to him.

I would like to add that the EPA's recent performance is quite good in the areas this committee is reviewing this morning. You will soon propose a new civil penalty program addressing many of the issues I have discussed with other witnesses today. In your current civil collection figure, 99 percent is the highest collection figure I have seen in any Government program of its size. It would have to go to 99 and 44/100th and then you would be as pure as Ivory soap. If other agencies could do as well at debt collection, we could cut billions of dollars from the Federal deficit. I look forward to your testimony and you can summarize it in any way you see fit. The full statement, of course, will go into the record.

TESTIMONY OF LEE M. THOMAS, ASSISTANT ADMINISTRATOR FOR SOLID WASTE AND EMERGENCY RESPONSE, U.S. ENVIRONMENTAL PROTECTION AGENCY, ACCOMPANIED BY GENE LUCERO, DIRECTOR OF WASTE PROGRAMS ENFORCEMENT OFFICE, TECHNICAL BRANCH, AND KIRK SNIFF, LEGAL BRANCH, WASTE PROGRAMS ENFORCEMENT OFFICE

Mr. THOMAS. Thank you very much, Senator, and we certainly appreciate those comments. I will pass them on to Bill Ruckelshaus. I have enjoyed the opportunity of working with him myself.

I have with me today two colleagues. On my right, Gene Lucero, who is Director of our Waste Programs Enforcement Office, the Technical Branch, and on my left, Kirk Sniff, who is in charge of the Legal Branch of that same effort.

As you have indicated, I am responsible for the hazardous waste programs in EPA, two statutory responsibilities. One is the Resource Conservation and Recovery Act, which is the Hazardous Waste Regulatory Program, and second, the Superfund Program, or the Waste Cleanup Program.

Today, I wanted to talk with you about the penalty policy and recovery of those penalties under RCRA, the regulatory program, and our cost recovery program under Superfund. I will summarize my statement, Senator, for brevity's sake. As you indicated, in response to an inquiry from your staff, before I get into the specifics of the waste program, we are proud of the fact that at EPA we have collected 99 percent of the penalties imposed during 1983. We strive for collection of every bit of that money, and we intend to pursue that as a goal.

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But let me talk specifically about the two hazardous waste programs. First, the RCRA Program. We have the responsibility under RCRA to impose penalties. That responsibility in the statute talks about the seriousness of the violation, and it talks about good faith efforts to comply with applicable requirements, those two things being taken into account in the imposition of that penalty.

In 1983 and 1984, we imposed $1,159,841 in penalties under the RCRA Program for violations of our hazardous waste regulations. We have collected $1,154,291. So the majority of it has been collected. The rest of it is in the process of collection.

We have moved forward to deal with two aspects of our enforcement program, however, and the penalties associated with that important program under RCRA. One is to issue the policy that you just referred to; that is, the RCRA penalty policy, to try to ensure that there is consistency across our regions in the way that policy, the way those penalties are being imposed.

Second, we have moved to substantially increase the resources and management commitment to enforcement, generally, and specifically, in the hazardous waste area. Our policy and policy document which, by the way, was issued yesterday by myself and the Assistant Administrator for Enforcement and Compliance, Monitoring of the Agency, so it is, in fact, an issued policy today and has as its major components the goals of the agency which are primarily to ensure that our penalty policy ensures deterrence, that it incorporates fair and equitable treatment of the regulated community, and it leads to swift resolution of environmental problems.

We deal with those aspects by assessing penalties based on the gravity of the violation, the economic benefit that the violator potentially recoups as a result of that violation, and then we take into account the differences between cases to ensure that we have some consistency in the way the penalties are applied across the country.

In the gravity of violation, we look at two things. Potential for harm and deviation from the regulatory requirement. We have the authority to go up to a penalty of $25,000 per day, so a major violation, as far as potential for harm, and a major violation as far as deviation from the requirement, could result in a $25,000 per day penalty.

Next we look at economic benefit. We try to assess what economic benefit accrued to the violator as a result of that violation, and we add that into our ultimate penalty.

Third, we look at how we should possibly adjust that penalty based on good faith efforts, willfulness, history of noncompliance, ability to pay, factors such as those that are spelled out in our policy; and finally, we issue the penalty, and we have a process for a settlement conference or an administrative hearing if requested by the violator.

We then move to recover that penalty that was imposed, and that I have indicated. We recover the majority of those funds and pursue all of those funds.

Now, let me talk quickly about the Superfund Program, which is a very different program from RCRA. As far as cost recovery is concerned, it is not the kind of program in which we issue penalties, but it certainly is a program where we pursue the recovery of funds for the Government vigorously, and we are talking about substantial amounts of funds.

Under the Superfund Program, as I am sure you are aware, we have the authority to go after liable parties. Those liable parties at a particular cleanup site may be the owner or operator, previous owner or operator, transporters of waste to that site, or any generators of waste that ended up at that site.

We have the authority of broad liability provisions within the act to pursue them and force them to clean up or provide the funds to clean up, and if we are not successful in that endeavor, to use funds that have been accrued under the Superfund tax to clean up the site ourselves and seek to recover those funds in court.

The history of that effort in the program is relatively new, a 3-year-old program. We have pursued responsible parties and have recouped nearly $250 million in the last 2 years in funds to clean up sites. Now, I would call that cost avoidance more so than cost recovery. True cost recovery has recouped $5 million, and I will explain why that figure is as high as it is.

We have problems associated with cost recovery under Superfund which we are trying to overcome. Specifically, the difficulty of litigation. In this area, oftentimes we are looking at hazardous waste sites that may be 20, 30, 40 years old. We are searching for potentially responsible parties. In some of those cases, we just simply don't find anyone, or we find no records or no evidence that lead us to anyone who was a responsible party. At the majority of sites, though, we do find a trail.

We follow that trail, and we seek to recover costs up front or after we have expended our funds. So the issue of litigation and the actual movement through the courts, is a major problem associated with Superfund cost recovery but one we think we are making substantial progress with.

When we get to court, we have to first, as I have indicated, identify responsible parties, we have to prove that there was a release of a hazardous substance of a potential threat or a release at that site, we have to link that release to the responsibility of those responsible parties, we have to show if we are recovering our costs that we have cleaned up that site consistent with our regulations, the national contingency plan, and we have to have cost documentation as a part of our evidentiary package to show exactly what was spent at that site.

Currently, we have expended or obligated $555 million of Superfund money on a general basis. That is obligated. Of that, $405 million is site specific, and for which we are or will be seeking recovery. We presently have 51 cost recovery cases that have been filled by the Department of Justice, and $93 million, we have 32 more cases that are in preparation for submission to the Department of Justice or at the Department of Justice in preparation to be filed, accounting for $30 million.

So the $405 million, you have $123 million is in recovery in active movement as far as cases is concerned, and we will work through the remainder of that. Our policy is to seek to recover all of the funds that we expend on a site specific basis under Superfund.

The two efforts that we have underway that I think will lead to resolution of the bottlenecks that we found in the system on the Superfund for recovery of costs are: First, a task force that I established to deal with the backlog of cases in cost recovery that I found when

I came to the program. Those 83 cases that I referenced are largely the result of weeding out that backlog and moving them to Justice.

The second one, though, is far more important. It is an interagency task group working on developing more specific procedures within our agency and others to move those cases more rapidly through litigation to actually recover most the administrative aspects, that is, pulling together cost documentation. Ensuring that we have our management systems in place to get that documentation together quickly, as well as the legal aspects; ensuring that we have specific resources in coordinating with the Department of Justice; potential direct referrals from our regions, the U.S. attorneys, are all issues that we are sorting through, and we hope that we will have firm policies in place.

It will speed up our cost recovery effort on the Superfund side.

In conclusion, I feel that on the RCRA Program, the hazardous waste regulatory program, our penalty policy gives us a good firm policy to assure consistency across our regions as we move forward with a more aggressive effort in enforcement. We already have a good effort as far as collection is concerned. We think that policy is important. As far as Superfund is concerned, we have a complex set of issues to be concerned with, both administrative and legal. We think we are making progress. We think we are avoiding problems. We feel we are getting procedures in place to assure that that process moves more smoothly in the future. I appreciate the opportunity to be with you today, and I know the effort that this committee is making to look into the entire area of cost recovery.

We would be more than happy to receive advice or input as to how we can improve the processes that we have in our programs. I would be pleased to answer any questions that you have, Mr. Chairman.

Senator PERCY. Thank you very much, indeed. I do commend you for the new civil penalty policy. I especially like your stated goal of seeing penalties at least as high as the profit the company might have seen by violating the law. Especially when handing toxic substances, I have no sympathy for violaters trying to turn a quick profit and jeopardizing public safety. I do have some concerns about your penalty policy, where it has been up to now, really.

While I realize you will be toughening that policy, I feel it would be useful to hear your views about a few problem areas.

First, your collection record for current cases appears excellent, 99 percent as we discussed earlier. I am concerned about a possible backlog of older, uncollected cases. I do point out in an area that is not your own direct responsibility, but I wish you would pass on my concern to the enforcement officials there. There are several million dollars in uncollected penalties for water program violations, for instance.

In looking at the overall backlog of uncollected civil penalties and civil judgments throughout the Federal Government, the Justice Department's report that I reviewed showed that $24 million exists in uncollected civil penalties, $504 million in uncollected civil judgments, $273 million in similar uncollected claims. That roughly comes to $1 billion, and as my distinguished colleague, Senator Dirksen, used to say, a billion dollars here and a billion dollars there, and you are really talking real money pretty soon.

We need to use that money to keep getting our own deficit down. Could you ask Administrator Ruckelshaus to let me know back within say, 60 days, with a list of uncollected penalties and judgments under EPA's jurisdiction with a brief status report on those cases?

Mr. THOMAS. I certainly will, Senator.

[The information referred to follows:]

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUN 13 1984

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

Honorable Charles H. Percy
United States Senate
Washington, D.C. 20510

Dear Senator Percy:

Thank you for your letter of May 16, 1984, requesting copies of EPA's status report on Superfund Cost Recovery, and a list of uncollected penalties and judgments.

I have enclosed the requested material for Cost Recovery under Section 107 of CERCLA. The cases for litigation referral are considered "Enforcement Confidential", therefore, I ask that caution be used in disclosure of this material.

I have also enclosed our most current data for uncollected penalties and judgments under Section 3008 of the Resource Conservation and Recovery Act (RCRA). Section 3008 of RCRA is an enforcement penalty for noncompliance at hazardous waste disposal facilities.

If you should need further information or assistance, please let me know.

Sincerely yours,

Lee M. Thomas
Assistant Administrator

Enclosures

SUMMARY OF COST RECOVERY CASES:

NUMBER OF §107 ACTIONS FILED: 47
APPROXIMATE DOLLAR VALUE OF FILED CASES: 88.7M

NUMBER OF §107 ACTIONS REFERRED TO DOJ BUT NOT FILED: 16
APPROXIMATE DOLLAR VALUE OF CASES REFERRED: 9.2M

NUMBER OF ADDITIONAL §107 ACTIONS TO BE REFERRED TO DOJ IN FY'84: 33
APPROXIMATE DOLLAR VALUE OF ADDITIONAL CASES: 28.4M
(MISSING ESTIMATE FOR 13 SITES)

NUMBER OF §107 SETTLEMENTS OR JUDGMENTS SINCE SEPT. '84: 7
APPROXIMATE DOLLAR VALUE OF SETTLEMENTS OR JUDGMENTS: 2.6M

TOTAL NUMBER OF ABOVE CASES: 103
TOTAL DOLLAR VALUE OF ABOVE CASES: 128.9M

DOCUMENTATION COMPLETED FOR 46 CASES

Cost Recovery Case Status

Filed Cases:

	SITE	APPROX. $$
REG. I	*OTTATI & GOSS	2.1M
	MOTTOLO	550K
	NEW BEDFORD	927K
	BAIRD & MCQUIRE	1M
REG. II	*BERNCOLORS	550K
	*GOOSE FARM	2.5M
	*YORK OIL	893K
	PRICES LANDFILL	7.6M
	SYNCON RESINS	100K
	*LOVE CANAL	20M
REG. III	*UNION GAS	610K
	*NORTHEAST	1M
	*BRUIN LAGOON	1.2M
	LEHIGH ELECTRIC	1.5M
	DRAKE	200K
	TYSON'S LAGOON	340K
	TURCO	200K
	TYBOUTS	300K
	MANILLA CREEK	100K
REG. IV	*BLUFF ROAD	1M
	*ROADSIDE PCB'S	2.5M
	*CAROLAWN	550K
	*DREYFUS STREET	342K
	LUMINOUS PROCESSES	760K
REG. V	*WESTINGHOUSE	2.3M
	LEMON LANE	50K
	BENNETT'S QUARRY	250K
	SEYMOUR	3M
	*MIDCO I&II	1.4M
	*ISANTI	878K
	*REILLY TAR	940K
	CHEM-DYNE	4M
	ENVIRO-CHEM	500K
	SUMMIT	180K
	QMC	2M
	ANACONDA ROAD	40K
REG. VI	ARGENT	40K
	CRYSTAL	4M
	TRIANGLE	400K
	*VERTAC	695K

*COST DOCUMENTATION COMPLETED

COST RECOVERY CASE STATUS

FILED CASES:

	SITE	APPROX. $$
REG. VII	HORSE ARENAS	1M
	CONSEVATION CHEMICAL	1M
REG. IX	*GENERAL DISPOSAL	1.6M
	GLOBE	7M
	STRINGFELLOW	9M
REG. X	WESTERN PROCESSING	1.5M
	PACIFIC RECYCLING	300K

TOTAL $107 ACTIONS FILED: 47

APPROXIMATE TOTAL DOLLAR VALUE: 88.7M

COST RECOVERY CASES REFERRED TO DOJ:

	SITE	APPROX. $$
REG. III	*MOOR-FITE	276K
	*BIG JOHN'S SALVAGE	819K
REG. IV	*KEITH FARM POND	198K
	*PLASTIFAX	226K
	AMERICAN CREOSOTE	
REG. V	*CHEMICAL & MINERAL	445K
	*LASKIN POPLAR	2.1M
	*GREINER'S LAGOON	132K
	*OLD MILL	410K
	*LIQUID DYNAMICS	152K
	LIQUID DISPOSAL	
	RASER TANNERY	
REG. VI	*FRENCH LTD.	969K
REG. VII	*ELLISVILLE	448K
REG. IX	*TECATE	37K
	*BROWNSFIELD	167K

TOTAL $107 CASES REFFERED TO DOJ: 16

APPROXIMATE TOTAL DOLLAR VALUE: 9.2M

COST RECOVERY CASE STATUS

ADDITIONAL CASES BE REFERRED TO DOJ IN FY'84:

	SITE	APPROX. $$
REG. I	NORWOOD	
	PICILLO	4M
	CHARLES GEORGE	700K
	JOHNS MANVILLE	1M
REG. II	*KIN-BUC	3.7M
	*LIPARI	3.3M
	MEK	1M
	*PAS	3M
REG. III	TINICUM	200K
	TAYLOR BOROUGH	400K
	MIDDLETOWN	500K
	U.S. TITANIUM	300K
	MCADOO ASSOCIATES	400K
REG. IV	*A.L. TAYLOR	470K
	PEPPER STEEL	300K
	*TOWER CHEMICAL	817K
REG. V	CALUMET CONTAINER	300K
	NORMAN POER	300K
	*NORTHERNAIRE	163K
	GEBHART	130K
	DANVILLE PLATING	90K
	HIXON PLATING	43K
	ROGERS LABORATORIES	400K
	ALBURN INCINERATOR	1.1M
	ELECTRIC UTILITIES	100K
	J. V. PETERS	100K
	CYANIDE CHIPS	180K
REG. VI	MOTCO	1M
	BARKER CHEMICAL	500K
	*PESSES	332K
	GENEVA INDUSTRIES	1.7M
REG. VII	*AIDEX	1.5M
REG. VIII	SAND CREEK	500K

TOTAL ADDITIONAL $107 CASES TO BE REFERRED IN FY'84: 33

TOTAL APPROXIMATE DOLLAR VALUE: 28.4M

COST RECOVERY CASE STATUS

SETTLEMENTS (SOME ARE TENTATIVE) AND JUDGMENTS:

	SITE	APPROX. $$
REG. III	*ABM WADE	1.1M
REG. IV	*LENOIR	113K
REG. V	*A&F	340K
REG. VI	*PETRO PROCESSORS	600K
REG. VII	*DENNY FARM (JUDGMENT)	155K
REG. IX	*NICKEL SOLUTION	199K
REG. X	*AMERICAN SURPLUS	138K

TOTAL NUMBER OF $107 SETTLEMENTS SINCE SEPT. 1984: 7

TOTAL APPROXIMATE DOLLAR VALUE: 2.6M

RCRA §3008 JUDGMENTS - UNCOLLECTED PENALTIES*

Region	Defendant	Final Order	Amount Assessed	Amount Collected	Status
I	Union Rotograving	7-29-83	$8,000	$5,948	Balance used to effect corrective action.
VII	R.V. Hopkins	11-14-83	$3,500	$2,100	The firm is on a payment schedule - payments are timely.
VIII	Kryptonics	FY 1984	$1,500	$500	The firm is on a payment schedule - payments are timely.

* For all final orders issued in FY 1983 and the first two quarters of FY 1984.

Senator PERCY. Mr. Thomas, while EPA's collection rate is very high, based on the final penalties imposed, those final penalties are often well below your initially proposed penalties. This fiscal year, you have so far issued five final orders for RCRA violations. In four of the five cases—three in New York, and one in North Dakota—you proposed penalties ranging from $5,000 to $8,400. Your final penalties ranged from nothing, in one case, to $1,500. In each case, the final penalty was less than one-fourth what was proposed.

I reviewed two other EPA penalty reports, one for TSCA violations and the other for FIFRA. In both lists, the final penalties averaged less than half what EPA originally proposed.

Will your new civil penalty policy correct this practice, then?

Mr. THOMAS. We feel it will ensure there is consistency and clear criteria as to how those penalties will be imposed and what you will take into account as far as mitigating the penalty itself. Largely, when you get into the facts of the case with the individual company and whatever mitigating circumstances there may have been, there was sound rationale for why that penalty was reduced from its original imposition to final penalty.

The penalty policy clearly lays out the criteria to be used for doing that. I think you will see that it is consistent across our regions.

Senator PERCY. I am concerned about the difficulty EPA is facing and may continue to face over the next several years in collecting cost recovery for cleanup expenses under the Superfund Program. In your statement, you report that EPA has, to date, spent over $405 million for direct cleanup activity, while you have recovered just $5½ million. Presently, you have another $93 million in cases filed at the Justice Department, with another $30 million to be filed shortly.

Could I receive a status report in, say, 60 days on Superfund cost recovery?

Mr. THOMAS. Senator, we would be glad to furnish that to you. It indicates that the recovery of costs on a particular site is most appropriate when that site work has been completed. A number of the site cleanup projects that account for that $405 million that have been obligated are sites where we have work underway. The conclusion of that site work we find often averages at sites from 2 to 3 years from the initiating of the funding. They are complex sites. They aim toward a cost comparison at the conclusion of the site. That is why there appears to be such a lag in the amount of money on the cases filed versus the amount of money that has been obligated. But we would be more than happy to give you a report within 60 days.

Senator PERCY. Fine. If you could, consult early in the process with the Justice Department to see that they are quick to do the job. That would be helpful also.

Mr. THOMAS. Yes, sir.

Senator PERCY. I have one final question to you. It gets into a situation that I have gone up to study several times, and it is of considerable concern. That is the Waukegan Harbor and the cleanup of the Waukegan Harbor, with which you are familiar in your capacity as the Administrator of the Superfund Program. As you know, EPA has proposed to permanently encapsulate PCB's in the harbor. I simply cannot support the plan put forth by EPA, nor actually can Congressman John Porter, State Senator Allen Giacarras, many local

officials in Lake County and in the city of Waukegan. First, it would shut down the marina, which is the only boat storage and facility between Chicago and Wisconsin, and which has been in business for 50 years.

Second, by storing the PCB's in the harbor rather than removing them from the harbor, the proposal both figuratively and literally puts the problem to the side instead of removing it. One could contend that the plan establishes a portion of the harbor where the PCB's would be encapsulated as a permanent hazardous waste storage dump. We certainly don't want to do that.

It is my understanding that the Waukegan Harbor cleanup ranks as the most expensive project ever attempted by EPA under the Superfund Program. If funding is insufficient at this time to finance the complete disposal of the PCB's, I would propose at a minimum that the sediment be removed from the harbor and stored nearby. I am reminded of the television commercial from Fram oil filters in which the fellow says, "You can pay me now, or you can pay me later."

Since we'll have to remove the PCB's from the harbor at some point, we might as well do it now rather than later. The old Pillsbury motto is that "Eventually, why not now?" and I put that question: Can't we really do this in a more satisfactory manner? I recognize that there are many variables that will enter into your decision on this matter, including the cost of the project and the precedent that it sets.

It is my understanding that because the public comment period on the proposal has expired, you are somewhat restrained in the act to respond to my comments. You face a complex matter. Please understand that I am simply advising you of my own views on the problem. It is a serious problem. It concerns the community, and one that we are really looking to you for some real basic fundamental support and help. I am prepared to assist you in every way that I can to bring about a proper cleanup of the harbor. Please let me know of your decision just as soon as possible, and I hope it will be the right one.

I feel confident that it will be.

Mr. THOMAS. Thank you, Senator. I would add that as we went through the public comment period, we received a very similar comment and concern as to the issue that you have raised. We are really aware of the concerns on the part of the public about this issue. We do have the entire decision under review at this time. I feel like a decision will be forthcoming shortly.

[The following information was subsequently submitted:]

REMEDY FOR OUTBOARD MARINE CORP., WAUKEGAN, IL

On May 15, 1984, Lee Thomas signed a Record of Decision selecting a remedy for Outboard Marine Corporation site in Waukegan, Illinois. The remedy was selected based on technical feasibility, protection of public health and the environment and fund balancing. These considerations led the Environmental Protection Agency (EPA) to select a remedy that includes both offsite disposal of the highly contaminated material and onsite containment of the moderately contaminated material. The remedy may be summarized by site area:

Slip No. 3 and Upper Harbor

Hot Spot Removal—Sediments contaminated with concentrations of PCB's greater than 10,000 parts per million (ppm) will be dredged, dewatered, fixed and disposed in an offsite landfill licensed to accept PCB wastes.

Containment—Sediments contaminated with concentrations of PCB between 50 and 10,000 ppm will be dredged from the Harbor, dewatered in a lagoon to be built on adjacent OMC property, and disposed in a containment cell to be built under the OMC parking lot.

OMC Parking Lot

Soil contaminated with PCB greater than 50 ppm will be contained in a place. A containment cell will be constructed by tying impermeable slurry walls into the naturally-occuring glacial till beneath the site. The glacial till is a low-permeability, clay layer more than 50 feet deep under the Waukegan site.

Oval Lagoon/Crescent Ditch

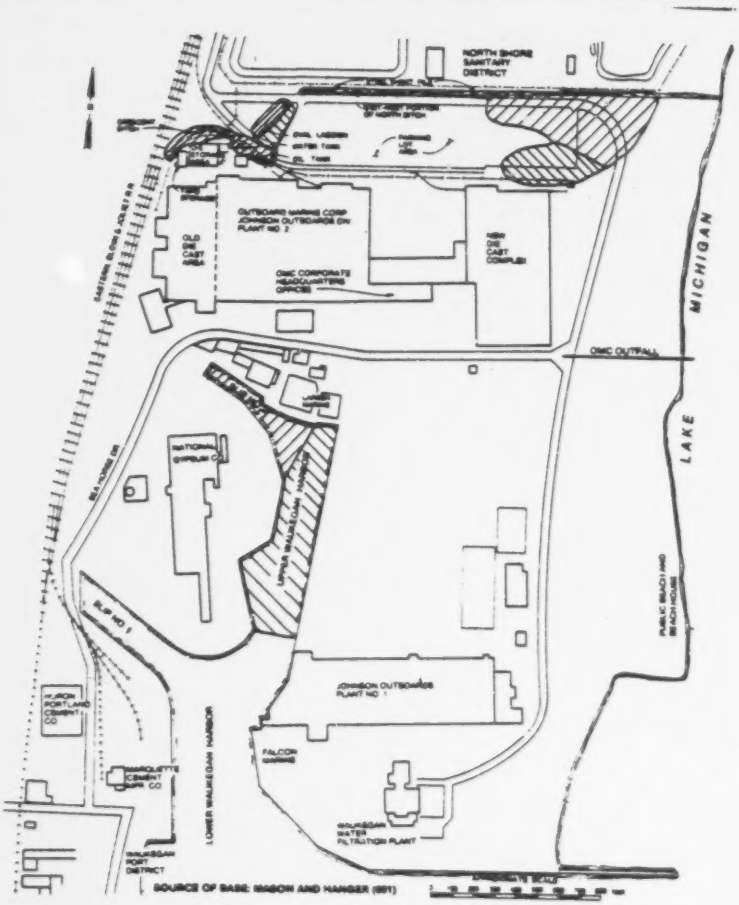
Hot spot removal—The highly contaminated sediments (greater than 10,000 ppm) in the Oval Lagoon/Crescent Ditch area will be excavated and disposed offsite ~~in a landfill~~ licensed to accept PCB wastes.

Containment—The waste material in the Oval Lagoon will be contained in place. A containment cell will be constructed by tying impermeable slurry walls into the glacial till under the Oval Lagoon. Contaminated material from the Crescent Ditch will also be contained in that cell.

North Ditch

Surface water diversion—A storm sewer will be placed in the North Ditch to prevent surface water and sediment transport from the Ditch. Soil excavated in placing that sewer will be disposed in the cell located in the Oval Lagoon. Material left in place under the stream sewer will be capped with clean fill and an impermeable cap.

The estimated cost of this remedy is $21 million.


NORTH SHORE SANITARY DISTRICT
OUTBOARD MARINE CORP. JOHNSON OUTBOARDS DIV. PLANT NO. 7
OMC CORPORATE HEADQUARTERS OFFICES
OMC OUTFALL
LAKE MICHIGAN
SLIP NO. 1
LOWER WAUKEGAN HARBOR
JOHNSON OUTBOARDS PLANT NO. 1
FALCON MARINE
WAUKEGAN WATER FILTRATION PLANT
WAUKEGAN PORT DISTRICT
SOURCE OF BASE: WAGON AND HANGER (1971)

LEGEND

PCB CONCENTRATIONS OVER 500 PPM

PCB CONCENTRATIONS BETWEEN 50 AND 500 PPM

FIGURE 1-2
SITE MAP
OMC HAZARDOUS WASTE SITE
WAUKEGAN, ILLINOIS
EPA 13-[illegible]

CH2M HILL

W65328.00

Senator PERCY. Thank you very much, indeed, and I appreciate that. I would also like to conclude the hearing by indicating that, once again, our transportation system is the safest in the world. Our job is just to continue to make it even safer. Every single life, every single injury involved is a tragedy for a family, for a community, and so forth. We just simply want to do everything we conceivably can. The area that we have discussed today is a matter of deep concern, widespread concern throughout my State and other States.

I appreciate very much the attention given to it by a very able group of administrators and the executive branch of Government, and I look forward to working closely with you. Thank you very much.

Mr. THOMAS. Thank you, sir.

[Mr. Thomas' prepared statement follows:]

STATEMENT OF
LEE M. THOMAS
ASSISTANT ADMINISTRATOR
U.S. ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE
SUBCOMMITTEE ON ENERGY, NUCLEAR PROLIFERATION
AND GOVERNMENT PROCESSES
COMMITTEE ON GOVERNMENTAL AFFAIRS
U.S. SENATE
MAY 9, 1984

Good morning, Mr. Chairman and members of the Subcommittee. I am Lee M. Thomas, Assistant Administrator for Solid Waste and Emergency Response, at the Environmental Protection Agency. I am responsible for administering the nation's hazardous waste management program authorized under the Resource Conservation and Recovery Act (RCRA) and the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) commonly known as Superfund. I am pleased to have the opportunity to appear today to discuss our cost recovery program under CERCLA and the RCRA Penalty Policy. But first, let me comment on the status of EPA's penalty collection effort generally.

EPA CIVIL PENALTY COLLECTIONS

At the request of your staff, we recently provided information from a survey we made of the Agency's civil penalty collection performance for cases included in 1983 for the following enforcement program: Clean Water, Clean Air, Stationary source, RCRA, Toxics and Pesticides. I am pleased to report that for the approximately 500 administrative and judicial actions where a penalty was assessed in that period, amounting to over $10 million, EPA

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collected over 99% of the amounts due the government. The remainder of my testimony will focus specifically on the Agency's waste program.

Background

In order to respond to the problem of improper management of hazardous waste, Congress amended the Solid Waste Disposal Act with the Resource Conservation and Recovery Act (RCRA) of 1976. Congress' overriding purpose in enacting RCRA was to establish the statutory framework for a national system that would ensure the proper management of hazardous waste.

Section 3008(a) of RCRA provides that if any person is in violation of a requirement of Subtitle C, including its implementing regulations, the Administrator of the Environmental Protection Agency (EPA) may issue an order requiring compliance. Section 3008(g) provides that any order issued may assess a penalty, taking into account:

- the seriousness of the violation, and
- any good faith efforts to comply with the applicable requirements.

Section 3008(g) further provides EPA with the authority to assess civil penalties of up to $25,000 per day of violation.

During Fiscal Year 1983 and through the first two quarters of Fiscal Year 1984, EPA has assessed over $1,159,841 in civil penalties under RCRA. Of this amount, the Agency has collected $1,154,291 of the amount that was due to be collected. The difference between amounts assessed and collected is due in part to the fact that, in some cases, payments are made on an

extended schedule. Although EPA has been assessing penalties for EPA violations, before this week, the Agency did not have a civil penalty policy that could provide uniform national guidance on determining the appropriate penalty for violations of RCRA. Within a few days, Courtney Price, the Assistant Administrator for Enforcement and Compliance Monitoring, and I will jointly issue a RCRA Civil Penalty Policy for assessing administrative penalties. This policy sets forth a system of penalty assessment which is consistent with the Agency's goals of:

- Deterrence;
- Fair and equitable treatment of the regulated community; and
- Swift resolution of environmental problems.

Penalty Assessment System

To assess a civil penalty under RCRA, EPA;

- Determines the initial penalty based on the gravity of the violation;
- Determines any economic benefit to the violator as a result of noncompliance; and
- Applies adjustment factors to account for differences between cases.

In the first step, two factors are considered:

- potential for harm; and
- extent of deviation from a statutory or regulatory requirement.

These two factors constitute the seriousness of a violation under RCRA, and have been incorported into the following penalty matrix from which the gravity-based penalty will be chosen:

MATRIX *

Extent of Deviation from Requirement

Potential for Harm	MAJOR	MODERATE	MINOR
MAJOR	$25,000 to 20,000	$19,999 to 15,000	$14,999 to 11,000
MODERATE	$10,999 to 8,000	$7,999 to 5,000	$4,999 to 3,000
MINOR	$2,999 to 1,500	$1,499 to 500	$499 to 100

*amounts are daily assessments

The highest cell (major potential for harm/major extent of deviation) is limited by the maximum statutory penalty allowance of $25,000 per day of violation.

In the second step above - determining any economic benefit- the Agency looks to whether a violator has derived significant savings by its failure to comply with RCRA requirements. If a company can gain an economic benefit from noncompliance, the gravity-based penalty alone may not provide sufficient deterrence to potential violators. Where the economic benefit is significant, the amount of savings is calculated and this amount is added to the gravity-based penalty derived from the penalty matrix.

After calculating a penalty based on the matrix and an economic benefit analysis, the penalty may be adjusted upwards or

downwards depending on certain factors:

- Good faith efforts to comply/lack of good faith;
- Degree of willfulness and/or negligence;
- History of noncompliance;
- Ability to pay; and
- Other factors unique to an individual case.

Adjustment of a penalty may take place before issuing the proposed penalty in the complaint, or after assessment of the proposed penalty, as part of the settlement process.

Settlement of Penalty

If a potential violator believes that it is not liable or that the circumstances of the case justify mitigation of the penalty proposed in the administrative complaint, it may request a settlement conference or an administrative hearing.

At the settlement conference the burden is on the violator to justify any adjustment to the assessed penalty. The consent agreement, stating the final agreed penalty, must include a general statement of the reasons for mitigating the proposed penalty.

Mr. Chairman, I believe that our RCRA penalty policy provides a firm and consistent penalty assessment process that will promote compliance with our hazardous waste management laws.

CERCLA Cost Recovery Program

Turning to the CERCLA Cost Recovery Program, I would note that it is very different from the RCRA program. While Congress authorized civil penalties to penalize and deter violations of RCRA, CERCLA's Cost Recovery program is intended to reimburse the government for public funds expended for cleanup of hazardous

waste sites. . CERCLA, which established the Superfund, was enacted by Congress to respond to the threats posed by uncontrolled hazardous waste sites around the country. It also established a trust fund through special taxes on the petrochemical industry to fund site cleanup.

CERCLA gives us the ability to respond to sites in 2 ways:

1) Through the enforcement authorities in Section 106 of the Act, responsible private parties can be ordered to do the cleanup at a site themselves. In these instances, little trust fund money is expended, as the cleanup action is done or paid for by the private parties.

2) Through the response provisions of Section 104 of the Act, we have both the financial resources and the legal authority to clean up a site with Superfund money, and then sue the responsible parties under Section 107 to recover costs. It is this second type of authority that is of interest to this Subcommittee.

For the cost recovery actions under Superfund, our goal is to collect as much of the Fund expenditures as possible. However, it is important to realize that not all of these funds will be successfully recovered. Let me explain. Section 107 of CERCLA provides generally that past and present owners and operators of a site, and generators and transporters who contributed hazardous substances to a site, shall be liable for costs of cleanup at that site. The government can, and does attempt to hold all parties liable for damages caused by dumping hazardous waste at a site. Sometimes this involves suing parties for actions done as long ago as 20 or even 30 years.

However, some sites may be "abandoned" or "uncontrolled". EPA may use Superfund money for cleanup in these instances where the owner or operator of the site cannot be identified or where

the transportors or generator of the waste at a site is not identifiable. The same is true where there is no financially viable party to sue for cleanup. These are cases in which no funds or only limited funds might be recovered.

In cases where EPA has expended Superfund money for cleanup, CERCLA's very strong liability standards allow the Agency to replenish the Fund through a successful cost recovery action. In essence, the Agency sues to establish the liability of a party and recover from them the costs expended at a site. These recovered dollars are put back into the Fund for later use at another site. In addition, through a feature unique to environmental laws, if EPA has issued a Section 106 Administrative Order, and a responsible party fails to comply with it by undertaking cleanup themselves, the recalcitrant party may be assessed by a court up to 3 times the cost of cleanup. Because the Agency has only recently been using its Administrative Order and treble damage authority with regularity, this treble damages provision has not yet been tested in the courts.

Components of a Cost Recovery Case

Cost recovery, while easy to conceptualize, is difficult to implement. Most potentially responsible parties challenge the government's assertions of liability, and resolution usually involves lengthy litigation.

There are several steps the Agency must take in a cost recovery action. First, the government must identify potentially responsible parties. If the parties are solvent the government

may pursue a cost recovery action in court. In addition, the government must address the four following elements:

- Release of a hazardous substance or the threat of such a release;
- The responsibility of the defendant(s);
- Removal or remedial actions taken by the U.S. or the State which were not inconsistent with the National Contingency Plan (NCP);
- The costs of action taken by the government.

Until a final judgment is rendered by the court, the amounts owed to the government by the responsible parties are not established. As I hope I have made clear, the cost recovery process is very different from the collection of debts for loans or services rendered where the involved parties basically have already agreed on the specified amounts owed.

As of the end of April 1984, EPA has obligated approximatley $555 million dollars of Superfund money; of that, roughly $405 million dollars has been spent for direct cleanup activities on specific sites. The Agency is just beginning its cost recovery program. To date the Agency has recovered approximately $5.5 million dollars at about 21 sites. Presently there are 51 cost recovery cases filed by DOJ with an approximate dollar value of $93 million. Thirty-two more cases have been referred by EPA to DOJ and should be filed shortly. These cases have a dollar value of approximately $30 million. This represents a possible cost recovery universe of $123 million dollars in 83 cases. Other cases will be developed as EPA completes cleanup action at a site and prepares the case for referral.

Bottlenecks in the System

Let me identify the bottlenecks inherent in a cost recovery system. We are in the process of establishing procedures to address these so that our cost recovery activity can keep pace with program growth.

The entire case building process is more complicated than originally anticipated. Our initial planning projection that a typical cost recovery action would take approximately one year has proven to be wrong. In reality, cost recovery cases are taking 2 to 3 years to complete. This is for both legal and technical reasons. Legally, CERCLA which provides for cost recoveries in Section 107 has only been on the books since 1980. Therefore we have little case history to use in arguing our cases. With every new case we are establishing new precedents. Fortunately courts largely have been interpreting CERCLA's language to the governments advantage. Recently, the government has won victories on the following points:

(a) That the CERCLA liability provisions are constitutional;

(b) In 6 cases courts decided that the scope of liability is joint and several;

(c) That we can recover from a defendant the interest on money expended from the fund;

As additional important precedents are set by the courts, the difficulties in proving our cost recovery cases and, therefore, the time and the complexity of litigation, will be reduced.

We are also coming to grips with the administrative problems involved in developing a successful cost recovery program. I am referring to the problems with cost documentation. As I said earlier, in order to recover costs from a responsible party, the government must be able to document all expenditures on a site specific basis. This is an enormously complex task made no easier by the fact that response actions are often carried out through a coordinated effort involving federal, state and local government entities with numerous contractors and subcontractors assisting at each level. Moreover, in most governmental entities, including at EPA, the office handling the accounts or finances is not the same office that handles the hazardous waste cleanup activity. Proper cost documentation, therefore, requires a coordinated effort among the many involved parties.
Adding to our problem is our lack of court experience with cost recovery cases. We have not clearly established how much documentation is necessary to be successful. Therefore, in case preparation, we have taken a cautious approach and perhaps prepare more documentation than is really necessary.

We are currently revising our existing procedures so that all site specific costs will be tracked in one system. Ultimately, we hope to have a computer system developed so that we can print out all costs for a specific site easily, reliably and quickly.

I have formed an interagency workgroup consisting of representatives of the Department of Justice (DOJ) and the many offices within EPA that deal with cost documentation. This group

is developing new policies and procedures to speed up and simplify cost recovery actions. The group will provide information on such issues as standard cost documentation, collection procedures, responsibilities of Regional and Headquarters offices, application of interest, cost witnesses, standard cost affidavits, and cost recovery settlement options.

The group is also looking into the feasibility of streamlining case referral procedures for smaller cost recovery cases and allowing EPA regional offices to directly handle cost recovery cases for small removal actions.

I have established a second task group with the sole charge of addressing our current backlog of current cost recovery cases. This group is working to pull together the cost documentation for 83 cases. A portion of these are cases filed with the courts but the cost documentation was insufficient. The other cases will be referred to Justice for filing once documentation is complete.

Mr. Chairman, our cost recovery program is a complex one. We are moving rapidly to set into place the systems and procedures necessary to keep it in steady pace with our program growth. It is important for both the viability and integrity of the Superfund program that we have a forceful and efficient cost recovery program. The establishment and maintenance of this program is a high priority to me and Administrator Ruckelshaus.

I am aware of the Subcommittee's activity in reviewing the efforts in programs all across the Federal government to recoup Federal funds. Because the cost recovery program is a new one, I

welcome any insight and suggestions you might have, Mr. Chairman, as I continue to build my program.

I am pleased to answer any questions the Members of the Subcommittee might have.

Senator PERCY. I want to pay particular tribute to an outstanding staff for the superior work that has been done and the fine cooperation extended to our staff and the subcommittee by the agencies involved.

Thank you.

[Whereupon, at 12:29 p.m., the subcommittee was recessed, to reconvene subject to the call of the Chair.]

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

PREPARED STATEMENT OF ALFRED DeANGELUS, DEPUTY COMMISISONER, U.S. CUSTOMS, U.S. DEPARTMENT OF THE TREASURY

GOOD MORNING, MR. CHAIRMAN. IT IS A PLEASURE TO BE HERE TODAY TO BRIEF THIS SUBCOMMITTEE ON THE RECENT IMPORTATION OF RADIOACTIVE STEEL PRODUCTS WHICH ENTERED THROUGH THE PORT OF EL PASO, AND THE PREVENTIVE MEASURES THAT WILL BE IMPLEMENTED BY THE CUSTOMS SERVICE.

A SHIPMENT OF STEEL CONCRETE REINFORCING BARS (REBAR) IMPORTED FROM MEXICO THROUGH THE PORT OF EL PASO WAS FOUND TO BE RADIOACTIVE BY PERSONNEL AT THE UNIVERSITY OF CALIFORNIA, LOS ALAMOS NATIONAL LABORATORY IN NEW MEXICO ON JANUARY 17, 1984.

SUBSEQUENT INVESTIGATION DISCLOSED THAT A CYLINDER CONTAINING PELLETS OF COBALT 60, WHICH WERE TO BE USED IN A TELETHERAPY UNIT, WAS TAKEN FROM A WAREHOUSE IN JUAREZ, MEXICO. THE RADIOACTIVE MATERIAL WAS SOLD TO A SCRAP YARD IN JUAREZ, AND LATER COMMINGLED WITH OTHER SCRAP METAL. THE SCRAP METAL WAS PRODUCED INTO STEEL PRODUCTS, PRIMARILY REBAR. SOME OF THE STEEL WAS IMPORTED INTO THE U.S. DURING DECEMBER AND JANUARY, IN THE FORM OF REBAR AND METAL TABLE LEGS. ONLY PORTIONS OF THE STEEL PRODUCED BY THE MEXICAN FACTORY WERE CONTAMINATED. SHIPMENTS WHICH HAD ENTERED THE U.S. COMMERCE WERE DETECTED IN TEXAS, ILLINOIS, NEW MEXICO, ARIZONA, COLORADO, OKLAHOMA AND CALIFORNIA.

WHEN THE TELETHERAPHY UNIT WAS TAKEN FROM A WAREHOUSE IN MEXICO, IT WAS PLACED IN THE BACK OF A PICKUP TRUCK. RADIOACTIVE COBALT 60 PELLETS FROM THE UNIT SPILLED ON THE GROUND AND ON THE BACK OF THE TRUCK. AFTER THE UNIT'S CYLINDER WAS SOLD TO THE SCRAP YARD, THE TRUCK WAS DRIVEN TO A RESIDENCE IN MEXICO. WHEN A RADIOLOGICAL SURVEY WAS PERFORMED BY THE NUCLEAR REGULATORY COMMISSION (NRC), HIGH LEVELS OF RADIOACTIVITY WERE TRACED TO THE TRUCK. SUBSEQUENTLY, THE TRUCK HAS BEEN FILLED WITH CEMENT AND BURIED IN MEXICO.

PRIOR TO THIS INCIDENT THERE WERE ONLY ADMINISTRATIVE CONTROLS IN PLACE WHEN DEALING WITH RADIOACTIVE SHIPMENTS, OR ANY OTHER TYPE OF HAZARDOUS CARGO. HOWEVER, BECAUSE OF THE GRAVITY OF THIS INCIDENT SOME OPERATIONAL ENHANCEMENTS ARE TAKING PLACE:

(1) THE CUSTOMS SERVICE IS CONTINUING TO ANALYZE IMPORT RECORDS AND CONDUCT INTERVIEWS OF INVOLVED PARTIES IN ORDER TO ENSURE THAT WE TRACK DOWN ALL POSSIBLE CONTAMINATED STEEL SHIPMENTS STILL IN THE UNITED STATES.

(2) THE NUCLEAR REGULATORY COMMISSION PLANS TO PURCHASE RADIOACTIVITY DETECTION DEVICES FOR CUSTOMS USE. IT IS ESTIMATED THAT THE DEVICES WILL COST $100,000. AN ANNUAL MAINTENANCE FEE OF APPROXIMATELY $25,000 WILL ALSO BE INCURRED.

(3) A TEAM COMPRISED OF REPRESENTATIVES FROM CUSTOMS, NRC, AND STATE AGENCIES ARE CURRENTLY SURVEYING THE ENTIRE MEXICAN BORDER AREA IN ORDER TO DETERMINE THE TYPE AND NUMBER OF DETECTION DEVICES THAT WILL BE REQUIRED.

(4) PRESENTLY CUSTOMS OFFICERS ARE USING DETECTION DEVICES ON LOAN FROM NRC. THESE DEVICES ARE CURRENTLY OPERATIONAL AT NINE BORDER PORTS.

(5) CONTINGENCY PLANS HAVE BEEN DEVELOPED AND ARE IN EFFECT WITH STATE HEALTH OFFICIALS.

SENATOR PERCY, THE CUSTOMS SERVICE WOULD LIKE TO EXPRESS ITS SINCERE APPRECIATION TO YOU FOR YOUR SUPPORT AND ACTIVE PARTICIPATION IN THIS MATTER. YOUR INTEREST HAS SPURRED THE PROCUREMENT OF RADIOACTIVITY DETECTION DEVICES AND RESULTANT BORDER IMPROVEMENTS.

THANK YOU

STATEMENT OF DR. PAUL F. ROTHBERG, SCIENCE POLICY RESEARCH DIVISION, CONGRESSIONAL RESEARCH SERVICE, LIBRARY OF CONGRESS

for a Hearing on

ENFORCEMENT OF FEDERAL REGULATIONS AND PENALTIES FOR SHIPMENTS OF HAZARDOUS AND RADIOACTIVE ? 'RIALS

Mr. Chairman and Members of the Subcommittee:

The Congressional Research Service appreciates this opportunity to contribute to your hearing this morning. This statement is based primarily on a recently completed CRS report entitled Nuclear Materials Transportation: Safety Concerns, Governmental Regulations and Activities, and Options To Improve Federal Programs, and thus does not address policy issues associated with non-nuclear hazardous materials.

DOT AND NRC ENFORCEMENT ACTIONS

The Department of Transportation (DOT) and the Nuclear Regulatory Commission (NRC) play a major role in regulating the safety of nuclear materials transportation. Based on years of scientific study, testing, and international cooperative efforts, these agencies have instituted a complex system of regulations that govern every aspect of this transportation activity. To ensure that their regulations are complied with, both DOT and NRC conduct enforcement programs, which are complemented by State efforts.

An essential part of the Federal enforcement program is the assessment of meaningful penalties on those companies that violate Federal safety regulations. Congress recognized the importance of enforcement and provided DOT in the Hazardous Materials Transportation Act (HMTA, P.L. 93-633) with the authority to impose penalties of up to $10,000 per violation per day.

During an extensive review of numerous enforcement cases, we found that DOT officials have frequently imposed relatively small penalties against companies that allegedly violate Federal safety regulations affecting nuclear materials transportation. 1/ We also found that DOT does not use a Department-wide system

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1/ As used in this statement, the terms "violated" or "violator" do not suggest that a party was actually convicted in a court of law or admitted guilt, but rather that Federal officials accused the party of a violation and that, in many cases, the party paid a civil penalty for the alleged violation. Payment of a civil penalty is not an admission of guilt.

of guidelines in the setting of its penalties, but rather relies primarily upon the discretionary authority of DOT officials who must follow the general criteria set forth in HMTA. Interviews with key DOT regulatory specialists and inspectors also indicated that: (1) many have been dissatisfied with the small penalties that were eventually imposed in some cases, and (2) DOT's enforcement program could be improved if they had an increased input into the legal process of determining the size of appropriate penalties.

NRC is allowed to impose much stiffer fines than DOT can. In P.L. 96-295, Congress amended the Atomic Energy Act to raise the maximum civil penalty that the Commission could impose from $5000 to $100,000 per violation of a regulation per day. To implement its authority, NRC has instituted a clearly defined system of penalty guidelines that sets forth the amount of penalties for different classes of its licensees depending on the severity level of the violation. This system gives industry an indication of the size of the penalty that they are likely to receive if they violate one of NRC's regulations. However, since the guideline penalties are relatively small, many are in the $1,000 to $5,000 range for the worst case violations, they may not achieve the primary purpose of NRC's enforcement program, which is "to promote and protect the radiological health and safety of the public." It is noteworthy that these guideline fines were determined by NRC officials, primarily on the basis of their past experiences, and apparently without the benefit of risk assessment studies or other scientific analyses.

One can also question whether NRC has used its authority to impose meaningful penalties in the conduct of its enforcement efforts. Our review of the civil penalties that were imposed on NRC licensees for alleged violations of safety regulations involving nuclear materials transportation from January 1, 1982, to February 15, 1984, indicated that NRC officials have imposed relatively small

penalties, when compared to the maximum penalty allowed under law. It is not suggested that NRC should impose fines of $100,000 for each violation, but it is doubtful whether such small fines have a substantial impact on transportation safety and deter other potential violators of the Federal code.

WHY HAVE DOT AND NRC IMPOSED RELATIVELY SMALL FINES?

DOT and NRC are concerned with promoting compliance with their regulations, not in revenue generation or putting companies out of business because of noncompliance. These agencies know that imposing stiff fines in all cases may not lead to a direct improvement in compliance. They are also aware that their regulatory actions have contributed towards on enviable safety record for nuclear materials transportation. In addition, the following other factors may help explain why DOT and NRC do not frequently impose stiff fines:

-- These agencies may argue that the seriousness of the violation, i.e., the degree of public risk, may not warrant a stiff fine (however, some of the alleged violations that we examined appear to be quite serious and many others could have interfered with emergency response efforts);

-- When the inspectors collect insufficient or inadequate evidence, Federal attorneys may choose not to pursue vigorously all violations cited in the investigation;

-- Other mitigating circumstances, such as the past safety record of the parties involved and efforts taken or promised to comply with Federal regulations, may substantially affect the amount of a final penalty assessment; and

-- For purposes of administrative expediency, the agencies frequently process several violations together and affix a total fine for all of the violations cited, thus resulting in a low average fine per violation.

Nevertheless, the importance of a meaningful penalty system for violators should not be dismissed. With an effective penalty system, Federal safety inspectors can have a greater impact on further improving transportation safety. DOT and NRC could impose substantially larger average penalties without new legislative authority.

OPTIONS TO PROMOTE TRANSPORTATION SAFETY AND TO STRENGTHEN FEDERAL ENFORCEMENT PROGRAMS

The current outstanding safety record for nuclear materials transportation does not obviate the need to consider whether and how existing policies, regulations, and programs could be improved. As the Congress reviews the implementation of the Hazardous Materials Transportation Act, the Atomic Energy Act, and laws dealing with nuclear waste disposal, some consideration might be given to the following options:

-- encouraging DOT and NRC to impose larger penalties in those cases involving serious violations of Federal code;

-- improving the training of DOT inspectors regarding the rules of evidence and legal procedures;

-- increasing the number of Federal and State inspectors overseeing nuclear materials transportation;

-- providing for increased consultation and cooperation among Federal officials working on enforcement actions;

-- encouraging DOT to issue a more definitive statement of its enforcement policies, including penalty guidelines; and

-- strengthening the information base regarding all aspects of nuclear materials transportation, especially Federal enforcement actions.

However, any proposal that would require additional expenditures would need to be evaluated in terms of alternative uses of the funds as well as its prospects of improving on the current safety record for nuclear materials transportation.

STATE OF ILLINOIS
OFFICE OF THE GOVERNOR
SPRINGFIELD 62706

JAMES R. THOMPSON
GOVERNOR

July 27, 1984

Honorable Charles H. Percy
600 East Monroe Street
Springfield, Illinois 62701

Dear Senator Percy:

Thank you for the opportunity to comment on your June 5, 1984, letter to the governors of states adjacent to Illinois regarding enforcement of regulations for the transportation of radioactive materials and other hazardous materials.

As was indicated in my State of the State message to the legislature and the citizens of Illinois, I have serious concerns about the safety of the citizens of Illinois and the dangers posed to the environment by the unsafe transportation of hazardous materials. Since ensuring an acceptable level of compliance with the Hazardous Materials Transportation Regulations depends primarily on enforcing them, I have requested that the Department of Law Enforcement add an additional twenty-five (25) new officers to its present complement of forty-seven (47) Hazardous Materials Specialists. This will represent an increase in enforcement capabilities of 53%. These officers represent our sole means of enforcement and, therefore, it is important that we make as great a commitment to this activity as resources permit.

Additionally, as a result of the Surface Transportation Assistance Act of 1984, Section 402, from which the Motor Carrier Safety Assistance Program was developed, Illinois received $912,000, the highest amount granted to any state, to assist Illinois in improving highway truck safety programs. A portion of this money has been designated for use by the Department of Transportation to increase its Hazardous Materials Section staff.

It is a compliment to the state to have been considered for this magnitude of federal funding, and this confirms that Illinois has one of the finest hazardous materials transportation programs in the nation. Illinois has, since the inception of the program in 1979, inspected over 13,000 trucks transporting hazardous materials. We have identified only one shipment of radioactive materials transported in violation.

I believe that Illinois is on course with its enforcement efforts to reduce risks to the citizens of Illinois, its properties, and the environment.

If I can offer further comment in this regard, please let me know.

Sincerely,

James R. Thompson
GOVERNOR

OFFICE OF THE GOVERNOR
INDIANAPOLIS, INDIANA 46204-2797

ROBERT D. ORR
GOVERNOR

July 3, 1984

The Honorable Charles H. Percy
United States Senator
Committee on Governmental Affairs
United States Senate
Washington, D.C. 20510

Dear Senator Percy:

Thank you for your letter in support of strong legislation and enforcement of hazardous materials and hazardous waste violations. It is understandable that you would be concerned about interstate shipments related to your home state of Illinois.

Indiana legislation has been improved considerably to help deal with the problems involved with hazardous materials and wastes. Our General Assembly has adopted the Environmental Management Act, which is compatible with the Federal E.P.A. regulations in regard to hazardous materials and wastes. The Code of Federal Regulations, Title 49, also has been adopted into Indiana state law. (See attachment)

An Emergency Hazardous Materials Disaster Plan is being developed, and it combines all state response agencies under one organized response for activation in case of a hazardous material incident.

Indiana and Illinois officials have already met to exchange and develop enforcement, compliance and investigation methods for hazardous materials. Two attendees from Indiana have been to the Illinois Law Enforcement Training Academy for their Hazardous Materials Enforcement and Compliance School, and a third person is attending at this time. Additionally, the Indiana State Police Department continues to train a number of selected officers in hazardous materials enforcement and compliance.

Indiana is a participant in CASHMIR, Cooperation Among States in Hazardous Materials Investigations and Recovery. CASHMIR's goals are well defined in the attached copy of their bylaws. CASHMIR's member states are Illinois, Indiana, Ohio, Michigan, Wisconsin, and Kentucky. Its associate members include MAGLOCLEN, U.S. EPA, and the U.S. Coast Guard.

This information should demonstrate that Indiana is interested and involved in hazardous materials and waste enforcement, investigation, and cooperative development with neighboring states.

Sincerely,

ROBERT D. ORR
Governor

RDO:JH:mm

Attachments

cc: Superintendent John Shettle
Indiana State Police

FEDERAL MOTOR CARRIER SAFETY AND
HAZARDOUS MATERIAL REGULATIONS
ADOPTION IC-8-2-7-43.5

(a) The following parts of the federal Motor Carrier Safety Regulations are adopted as Indiana law and, except as provided in subsection (c), must be complied with by interstate and intrastate motor carriers: Title 49, Code of Federal Regulations, Parts 390, 391, 392, 393, 395, 396, 397, 398. However, the provisions of Part 395 which regulate hours of service of drivers, including requirements for the maintenance of logs, do not apply to drivers of trucks which are registered by the bureau of motor vehicles as farm trucks under IC 9-1-4-41.

(b) Title 49, Code of Federal Regulations, Parts 171, 172, 173, 177, and 178 are adopted as Indiana law. Except as provided in subsection (c), every:

(1) private carrier;
(2) common carrier;
(3) contract carrier; and
(4) carrier otherwise exempt under section 3 of this chapter;

must comply with the regulations adopted under this subsection, whether engaged in interstate or intrastate commerce. Motor vehicles that are exempt from the other provisions of this chapter under section 3 of this chapter are not exempt from the regulations adopted under this subsection.

(c) The regulations adopted under this section do not apply to fertilizer distribution equipment. For the purposes of this section, "fertilizer distribution equipment":

(1) means any truck, trailer, farm equipment, or implement of husbandry that is used for the application of fertilizer and agricultural chemicals or the delivery of fertilizer and agricultural chemicals from:
    (A) a retail fertilizer and agricultural chemical business directly to a farm; or
    (B) farm to farm; and
(2) includes nurse tanks, dry and liquid nurse equipment, dry spreaders, and dry and liquid applicators.

(d) For the purpose of enforcing this section, any law enforcement officer may, upon demand, inspect the books, accounts, papers, records, memoranda, equipment, and premises of any carrier, including a carrier exempt from the other provisions of this chapter under section 3 of this chapter. As used in this section, "law enforcement officer" has the same meaning as in IC 35-41-1-2.

(e) A person who violates any of the regulations adopted by subsection (a) or (b) commits a Class C infraction.

(This act takes effect 1-1-85)

-- By-Laws --
Cooperation Among States in Hazardous Materials
Investigations and Recovery

ARTICLE I NAME

The name of the organization shall be Cooperation Among States in Hazardous Materials Investigations and Recovery (CASHMIR).

ARTICLE II PURPOSE AND GOALS

A. The purpose and goals of CASHMIR shall be:

1. The purpose of CASHMIR is to provide information, coordinate investigations, and provide resource support to member agencies for the detection and prosecution of violations of statutes relating to the transport and disposal of hazardous materials and/or hazardous waste.

2. The goal is to deter activities that involve violations of hazardous materials and hazardous waste statutes which transverse the boundaries of member states by establishing an organization that will:

   a. Establish effective lines of communication among all agencies that have an interest in hazardous materials and hazardous waste and its disposal.

   b. Identify personnel in member agencies who will monitor and initiate prompt corrective action in situations involving hazardous material or waste violations.

   c. Support the prosecution for civil and criminal violations of hazardous material and hazardous waste statutes by sharing information and providing necessary revenues as needed.

   d. Promote training in detection, investigation, and prosecution of hazardous materials or waste violations.

B. In addition to CASHMIR's role to members, CASHMIR will attempt to develop and maintain liaison with other similarly constituted groups on the National level.

Iowa Department of Transportation
800 Lincoln Way, Ames, IA 50010 515/239-1111

July 12, 1984

The Honorable Charles H. Percy
United States Senator
462 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Percy:

Thank you for your letter to Governor Branstad outlining the findings of the subcommittee hearing on hazardous materials transportation. The Governor has asked that I respond to the concern that adjacent states may not be enforcing hazardous materials transportation regulations to the same degree as Illinois.

Governor Branstad designated the Iowa Department of Transportation the lead agency for the U.S. DOT Motor Carrier Safety Assistance Program. Iowa has enforced the Federal Motor Carrier Safety Standards related to highways for several years. Additionally, we are upgrading our program in cooperation with the U.S. DOT through the Motor Carrier Safety Assistance Program.

There is no federal rail program comparable to the Motor Carrier Safety Assistance Program, but we are in the process of working informally with the Federal Railroad Administration to assist them in hazardous materials inspection and enforcement activities.

I understand that Illinois and the U.S. DOT are working together in both highway and rail hazardous materials enforcement under a program called "State Hazardous Materials Enforcement Development Program." Unfortunately, the funding for that program is drawing to a close. When Iowa applied for funding, no unobligated money was available.

There will always be a difference in the degree of need for hazardous materials enforcement in the various states. For example, while Iowa is a major east-west transportation corridor and a major transportation corridor between the Twin Cities and the Kansas City area, we do not have industrial activity of the scope found in the Chicago or St. Louis areas. Therefore, the Iowa approach to hazardous materials transportation enforcement may be significantly different than the Illinois approach.

Again, I appreciate receiving your letter. Governor Branstad and I share your interest.

Sincerely,

Warren B. Dunham
Director

May 11, 1984

Franklin A. Jacobs
Chairman of the Board
Chief Executive Officer

Senator Charles H. Percy
Washington, D.C. 20510

Dear Senator Percy:

I have been informed that at a meeting of your subcommittee on Energy, Nuclear Proliferation and Government Processes this past week, an Illinois State Trooper Ronald L. Reese stated that "it could have been prevented" when asked if Falcon Products bore any responsibility for the instance where radioactive table legs were discovered.

The facts involved in this bizarre incident are as follows:

1. On January 25, 1984 I was informed by Mr. Darrel Wiedeman of the Nuclear Regulatory Commission about a potential problem in that they had discovered an X-ray teletherapy machine containing cobalt 60 had been illegally disposed of in a Mexican scrap yard from which we purchased scrap materials.

2. When we asked what should we do, he sent an inspector out to examine the grey iron castings in our facility here in St. Louis. It was found that many of them were emitting levels of radiation.

3. Upon the advice of the Nuclear Regulatory Commission we brought in a consulting firm and, with the help of the NRC, examined all of the cast iron products at our plants here in St. Louis and in Greeneville, Tennessee.

4. The Nuclear Regulatory Commission was able to determine that the earliest potential contamination would have occurred on December 10, 1983 and would have stopped when they called us on January 25, 1984 because we immediately stopped all production. Upon checking all

Falcon Products, Inc.
9387 Dielman Industrial Drive, Saint Louis, Missouri 63132 314/991-9200

of the raw material at our two facilities, we were able to determine that approximately 95% of the cast iron products manufactured between those dates had been discovered.

5. We were concerned, however, about the potential 5% that could not be identified. Our company developed a computer list alphabetically by state of the 33,000 pedestal tables that had been shipped from any of our locations between the dates of December 10, 1983 and January 25, 1984. This list, under the administration of the Nuclear Regulatory Commission, was sent to the health departments in each of the 50 states.

6. The health departments checked out each and everyone of the 33,000 pedestals in question and when they discovered one or more that had any degree of radiation both ourselves and the NRC were notified so that the merchandise could be picked up by us and replaced. The table bases discovered by Trooper Reese had been shipped on January 13, some two weeks before we were even notified of the problem. It was on the list that had been given to the health department of the State of Illinois and would have been checked out in due process.

7. With the help of the health departments in all 50 states, and under the guidance of the Nuclear Regulatory Commission, we found some 2,500 parts that were radioactive and replaced them. All of the contaminated material was sent back, with the cooperation of the Department of Transportation, to Mexico where the Mexican authorities received it and disposed of the contaminated material in a dump site that had been specifically set up for this project.

Here I would like to personally thank and commend the agencies of the Federal Government and all of the agencies of the State Governments who performed magnificiently in this situation. The personnel of the Nuclear Regulatory Commission did an exemplary job in making sure that every single part was checked and the hundreds of inspectors throughout the 50 states did an absolutely unbelievable job of very rapidly checking all of these parts out while making sure that there was virtually little panic and it

was done in an extremely professional manner. The Department of Transportation cooperated fully to make sure that all radioactive materials were transported out of this country to meet the existing regulations.

I would, however, like to call your attention to what is a potentially disastrous situation, one that has evolved from our very sad experience. We have found, in working with the NRC and the Department of Transportation, that while the NRC licenses many companies in this country to manufacture equipment utilizing radioactive substances, and under the license the firm in question must dispose of the harmful by-products in a manner prescribed by law, this does not apply when this equipment is exported out of the United States. The regulations now in effect state that any licensee of the NRC may export this equipment, as long as the Department of Transportation regulations are observed as to the shipping of the product. The NRC has no control over the disposal of these items once they leave our shores. Tens of thousands of potentially extremely hazardous materials are shipped out of this country every year in one form or another, and the possibility exists of their disposal in a manner that they wind up in cast iron products, that is made mostly from scrap, and is shipped back to this country. Hundreds of thousands of pounds of grey iron castings come into this country every week from Korea, Japan, Taiwan, India and China. The amount actually coming from Mexico is quite small.

We, at our company, having had this unfortunate situation foisted on us, have taken steps, with the assistance of the Nuclear Regulatory Commission, to make sure that none of the potentially dangerous material comes to our products again. We have set up, at the cost of some $20,000, equipment at our foundry that inspects all raw scrap material coming in and any potential contamination will set off an alarm and the raw material is refused. We then check all of the products coming out of our foundry to make doubly sure that some did not inadvertently slip by. We take a further step once the merchandise is sent across the border to El Paso by rechecking it with a second consulting firm before it is loaded for shipment. In this way we are able to certify all of our products as being completely free of contamination. There is no equipment at the ports of entry in this country to check any of the

cast iron that is coming in, therefore, we are protecting the customer and ourselves by doing it.

I would heartily suggest, Senator Percy, that your committee look into this problem in depth because what we have is a disaster that must happen unless something is done about it. This particular incident was one of rather low levels of activity because the X-ray machine in question turned out to be quite old and the life of the cobalt 60 involved was quite low. No one can say that that will be the case next time and a potential disaster could happen.

The answer to the problem is quite simple. All we would have to do is to place at the various ports of entry in this country, equipment such as we have purchased at our own foundry and let this equipment merely inspect, even on a spot-check basis, the cast iron products that are coming in from countries all over the world. Another method might be that all purchasers of cast iron products and/or distributors of same would have to supply a Certificate of Origin stating just how and where these products were manufactured and what steps were taken to insure the contamination free portent of the product.

We would certainly have any and all of our records open for you or any members of your staff's inspection because our experience was very painful and quite costly, but if it could be prevented it might mean something.

Yours very truly,

Frank Jacobs

FRANKLIN A. JACOBS
Chairman of the Board

cc: Senator Tom Eagleton
Senator John Danforth
Rep. Robert Young
Rep. Richard Gephardt
Mr. Darell Wiedeman

JOHN C. DANFORTH
MISSOURI

COMMITTEES:
FINANCE
GOVERNMENTAL AFFAIRS
COMMERCE, SCIENCE, AND
TRANSPORTATION

United States Senate
WASHINGTON, D.C. 20510

August 9, 1984

The Honorable Charles H. Percy
United States Senate
SD-462
Washington, D. C. 20510

Dear Chuck:

Thank you for your letter of July 26 responding to my concerns about the treatment of Falcon Products, Inc., at a recent hearing of the Subcommittee on Energy, Nuclear Proliferation, and Government Processes. I appreciate your willingness to keep the record open to provide Falcon with an additional opportunity to respond to the matters raised in the hearing. I think this is an appropriate and fair-minded step to take.

Sincerely,

John C. Danforth

July 30, 1984

Franklin A. Jacobs
Chairman of the Board
Chief Executive Officer

Senator Charles H. Percy
United States Senate
Washington, D. C. 20510

Dear Senator Percy:

We have your letter of July 26 and appreciate your taking the time to let us hear from you with reference to the matter in question.

In your letter you mentioned that testimony was given in that Falcon Products was notified about the contamination of the Mexican scrap iron on January 25, 1984. Your letter also states that Trooper Reese "testified that, on January 31st -- twelve days after this notification -- he apprehended a truck containing this merchandise on the Tri-State Tollway in Illinois." Both of these statements are correct.

The Nuclear Regulatory Commission notified us on January 25 of the potential problem. We, Falcon Products, immediately stopped our shipping operations from our factories in St. Louis, Greeneville, Tennessee, and Juarez, Mexico. The Nuclear Regulatory Commission sent in their inspectors on January 25 and made an inspection of the cast iron products here in St. Louis. It was determined that we had several instances of low level radioactivity from certain of these castings.

With the help of the Nuclear Regulatory Commission we brought in a recommended consulting firm, along with their equipment, to make an inspection of all of the cast iron products in our possession at all of our facilities. This inspection took the better part of Thursday, January 26 through Monday, January 30. The Nuclear Regulatory Commission also assisted us at this time in setting up equipment of our own so that we could inspect all of the products in our possession and any

that we are going to ship. On January 31 we commenced shipping after receiving certification from the Nuclear Regulatory Commission that the products in question were being tested in accordance with the equipment that they had us purchase so that they could be certified as being free from any contamination.

We were concerned, however, that although it was one matter to check all of the materials that were in our possession, we had no idea of what had been shipped previous to January 25 and, as we ship 1,500 pedestal table bases a day, we had no idea as to what part of those might have been contaminated.

We, therefore, in order to make sure that all of the contaminated parts were recovered (even though none of this was our fault), went back into our records and managed to create an exact list of all of the pedestal table bases that had been shipped and to where they were shipped during the potential period of the problem. This time period was ascertained to have been from December 10, 1983, which is the first date that the X-ray teletherapy machine apparently appeared in the scrap dealer's yard in Juarez, Mexico, and January 25, 1984 when we were notified of the problem. The number of bases shipped during this time came to 33,000 pedestal table bases.

The shipment referred to by Trooper Reese was actually shipped on January 13, 1984 via Smith Transfer here in St. Louis. As you can see from the enclosed itinerary of this particular shipment, what happened was that the delivery attempt was made on January 17 but customer refused it, we were notified on January 30 that the customer would now take delivery and pay all charges and the shipment was actually back enroute to the consignee when Trooper Reese stopped the vehicle. We did not know, of course, that there was any problem until notification on January 25 and could not produce the actual shipments that had been made during this period of time until January 31, which just happened to be the same day that Trooper Reese located the material.

We, of course, assumed that the merchandise in question was shipped on the 13th of January and, therefore, was on the list given to the State of Illinois (we enclose copy of Illinois list) and would have been delivered far before January 31.

I am sure you can see that it would have been impossible for us to have done any more than what was accomplished and I

would once more like to compliment not only the Nuclear Regulatory Commission but the state health departments in all fifty states who did such a magnificient job in checking out each one of these 33,000 pedestal table bases to ascertain just which ones were radioactive.

I would once more, Senator Percy, like to point out that the situation that exists with grey iron castings in this country is one of great potential danger. The bulk of the grey iron cast parts utilized in the United States come from offshore. Most of the parts come from Korea, Taiwan, India, and Mainland China. We here at Falcon Products own our own factory in Juarez, Mexico and, with the help of the Nuclear Regulatory Commission, have set up the proper equipment to insure that we never inadvertently purchase any raw scrap that contains radioactive materials. This situation, however, does exist with the hundreds of thousands of tons of cast iron that are coming into this country every month. There is no equipment presently in place at our ports of entry to prevent what could be a very dangerous situation in the future.

I would urge you and your committee to look into this situation with all speed so that a potential tragedy in the making can be prevented.

We at Falcon, and myself in particular, are more than willing to add any knowledge that we have gained throughout this situation, if it is so desired.

Sincerely yours,

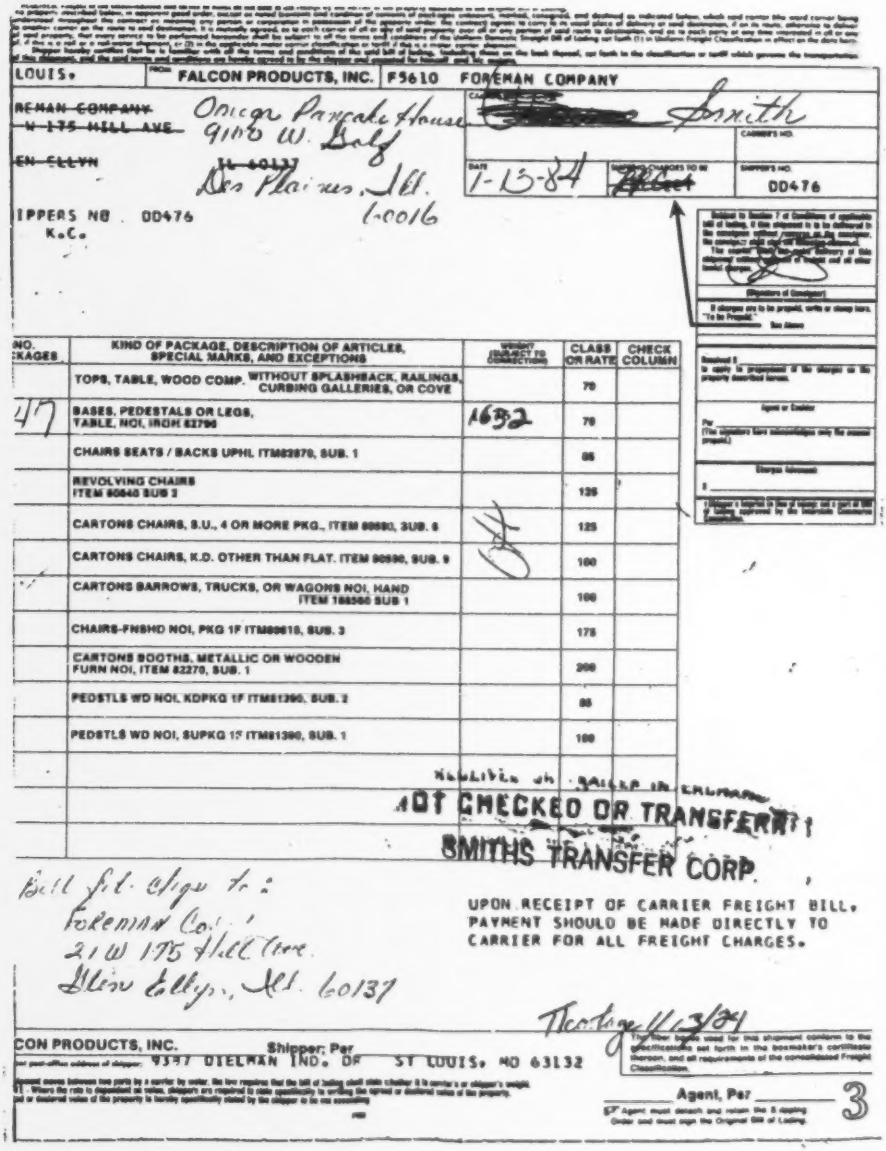
Frank Jacobs

FRANKLIN A. JACOBS
Chairman of the Board

Encls

cc: Senator Thomas Eagleton
Senator John Danforth

1-13-84	Shipment left St. Louis via Smith Transfer
1-17-84	Smith tried to deliver but shipment was refused a/c customer wanted inside delivery with no charges
	dated 1-24-84
1-27-84 Approx.	Falcon received On-Hand Notice from Smith/by certified mail (P.O.75744411) advising freight was undelivered and on-hand at Smith's Terminal 4300 W. 72nd Street, Chicago, Illinois
1-30-84	Falcon was advised by Smith that the customer agreed to take delivery of shipment and pay charges for inside delivery
1-31-84	Shipment loaded on truck in Chicago and was enroute to "Sold to" (Omega Pancake House, when Trooper Reese stopped truck for possibility of radioactivity.
	Once this shipment was discovered to be contaminated, Falcon Products paid $1,312.20 to move 8 bases, weighing 278 lbs., a distance of 300 miles.



LOUIS, | FROM FALCON PRODUCTS, INC. | F5610 FOREMAN COMPANY

~~REHAN COMPANY~~
~~W 175 HILL AVE~~
Omega Parcade House
9106 W. Golf
~~EN ELLYN~~ ~~IL 60137~~
Des Plaines, Ill.
60016

DATE 1-13-84 | ~~DELIVER~~ | DD476

IPPERS NO. DD476
K.C.

NO. PACKAGES	KIND OF PACKAGE, DESCRIPTION OF ARTICLES, SPECIAL MARKS, AND EXCEPTIONS	WEIGHT (SUBJECT TO CORRECTION)	CLASS OR RATE	CHECK COLUMN
	TOPS, TABLE, WOOD COMP. WITHOUT SPLASHBACK, RAILINGS, CURBING GALLERIES, OR COVE		70	
47	BASES, PEDESTALS OR LEGS, TABLE, NOI, IRON 82796	1632	70	
	CHAIRS SEATS / BACKS UPHL ITM82870, SUB. 1		85	
	REVOLVING CHAIRS ITEM 80640 SUB 2		125	
	CARTONS CHAIRS, S.U., 4 OR MORE PKG., ITEM 80680, SUB. 8		125	
	CARTONS CHAIRS, K.D. OTHER THAN FLAT. ITEM 80690, SUB. 9		100	
	CARTONS BARROWS, TRUCKS, OR WAGONS NOI, HAND ITEM 186560 SUB 1		100	
	CHAIRS-FNSHD NOI, PKG 1F ITM80618, SUB. 3		175	
	CARTONS BOOTHS, METALLIC OR WOODEN FURN NOI, ITEM 82270, SUB. 1		200	
	PEDSTLS WD NOI, KDPKG 1F ITM81390, SUB. 2		85	
	PEDSTLS WD NOI, SUPKG 1F ITM81390, SUB. 1		100	

NOT CHECKED OR TRANSFERRED
SMITHS TRANSFER CORP.

Bill Frt. Chgs to:
Foreman Co.
21W 175 Hill Ave.
Glen Ellyn, Ill. 60137

UPON RECEIPT OF CARRIER FREIGHT BILL, PAYMENT SHOULD BE MADE DIRECTLY TO CARRIER FOR ALL FREIGHT CHARGES.

Heritage 1-13-84

CON PRODUCTS, INC. Shipper, Per
9397 DIELMAN IND. DR ST LOUIS, MO 63132

Agent, Per

3

SMITH'S TRANSFER CORPORATION SICS P.O. Box 1000 Staunton, Virginia 24401

PRO NUMBER
REFER TO THIS NUMBER

TRAILER NUMBER	DATE	DEST.	ORIGIN	HOST REVENUE	ADV. I/L AMT.	BYD. I/L AMT.	
	1/13/84	CHI	STL	16630			071385086

CERTIFIED COPY
DUPLICATE OF THE
ORIGINAL UNPAID BILL

SHIPPER I.C. OR BIL. NUMBER

DD4 TE4

ROUTE (CARRIER)

OMEGA PANCAKE HOUSE
9100 W GULF
DES PLAINES, IL 60016

F5610

FALCON PROD INC A41550000000000
9387 DIELMAN IND
ST LOUIS, MO 63132

BILL TO
FOREMAN COMPANY
21 W 175 HILL AVE
GLEN ELLYN, IL 60137

HM	NO. PCS.	DESCRIPTION OF ARTICLES AND MARKS	WEIGHT	RATE	TOTAL CHARGES
	47	BASES KA 2 REQUEST	1632	10.19	166.30 PPD W 22

ARA SERVICES SMITH'S

THIS BILL IS NOW PAST DUE. PLEASE REMIT OR ADVISE REASON FOR NON PAYMENT.
IF PAYMENT HAS BEEN MADE, PLEASE DISREGARD THIS NOTICE.

159

SOP-307

FIRST AND FINAL NOTICE
UNDELIVERED AND/OR REFUSED FREIGHT

SMITH'S TRANSFER CORPORATION

HALLMARK OF SERVICE

Date 1 24 84

Certified Mail No. PO 7 5744411

TO: Placon Prod Inc. (Company)

Smith's Pro 071385086 Date 1 13 84

9387 Dielman Ind (Address)

Interline Carrier

~~Stnkx~~ St. Louis, mo 63132 (City / State / Zip Code)

C/L Pro DD4716 Date

Date of Your Shipment 1 13 84

Number of Pieces 47

Consigned To: Omega Pancake House

Consignee's Address: 9100 W Gulf Des Plaines Il 60016

Description of Commodity: bases 1632 lbs

This shipment is On Hand at our Chicago IL terminal.

Reason for refusal or non-delivery cons wants inside dely but will not pay charges per Chris Carmis with cons C

This shipment is being held subject to tariff storage charges. Common carrier liability expires after issuance of this notice and this Company will be liable only as warehousemen while the freight is in our possession, holding same only at owner's risk.

STORAGE CHARGES START 1 26 84. IF DISPOSITION IS NOT RECEIVED WITHIN 30 DAYS FROM THE DATE OF THIS NOTICE, SHIPMENT WILL BE SOLD AT PUBLIC AUCTION IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THE BILL OF LADING CONTRACT. IF THE SHIPMENT IS TO BE RESHIPPED OR RECONSIGNED, PLEASE ADVISE IN WRITING WHO WILL PAY TOTAL FREIGHT AND ACCESSORIAL CHARGES.

Please Reply To:

SMITH'S TRANSFER CORPORATION

4300 W 72nd St. (Address)

Chicago IL 60629 (City / State / Zip Code)

312 735 1500 Vicki Walker (Telephone)

Copies: Consignee
Connecting Line
Issuing Office File
Origin Terminal
Accounts Receivable Dept.

...CORPORATION STCS

P. O. Box 1000 Staunton, Virginia 24407

PRO NUMBER
REFER TO THIS NUMBER

TRAILER NUMBER	DATE	DEST.	ORIGIN	HOST REVENUE	ADV. I/L AMT.	BYD. I/L AMT.	
	2/01/84	STL	CHI	131220			55114973

SHIPPER B/L OR GBL NUMBER

SAME AS BILL TO

ROUTE (CARRIERS, PROS, JUNCTIONS) AH4

SMITH TRANS
4300 W 72ND ST
CHICAGO, IL 60629

BILL TO
FALCON PROD
A4155000000001
9387 DIELMAN
ST LOUIS, MO 63132

NO. PCS.	DESCRIPTION OF ARTICLES AND MARKS	WEIGHT	RATE	TOTAL CHARGES
6	PIECES RADIOACTIVE MATERIAL NOS RADIOACTIVE 111 UN 2982 RADIONUCLINE CO 60	278		
6	RATED AS WEIGHT	18000	7.29	1312.20
	TOTAL	278		1312.20 CO W TL
	VWB			
	********** EXCLUSIVE USE TU			
	CONTINUED			

SMITH'S HALLMARK OF SERVICE

THIS BILL IS NOW PAST DUE. PLEASE REMIT OR ADVISE REASON FOR NON PAYMENT.
IF PAYMENT HAS BEEN MADE, PLEASE DISREGARD THIS NOTICE.

STCS

P. O. Box 1009 Staunton, Virginia 24401

PRO NUMBER

REFER TO THIS NUMBER

HOST REVENUE	ADV. I/L AMT.	BYD. I/L AMT.	59114777

SHIPPER B/L OR GBL NUMBER

ROUTE (CARRIERS, PROS, JUNCTIONS)

BILL TO

HM	NO. PCS.	DESCRIPTION OF ARTICLES AND MARKS	WEIGHT	RATE	TOTAL CHARGES
		STL ********** TRAILER 25-370401 (2 SEALS REQUIRED) PER INSTRUCTIONS OF C THOR OBERG RADIATION SPECILIST US NUCLEAR REGULATORY COMMISSION REGION 111 SPECAIL INSTRUCTION TO DRIVER IF ANY PROBLEMS ARISE CALL RICH HARDY CHICAGO SAFETY 312 434 1379 OR 312 735 1500 CONTINUED			

ARA Services SMITH'S

THIS BILL IS NOW PAST DUE. PLEASE REMIT OR ADVISE REASON FOR NON PAYMENT.

IF PAYMENT HAS BEEN MADE, PLEASE DISREGARD THIS NOTICE.

...RATION STCS
P. O. Box 1000 Staunton, Virginia 24401

PRO NUMBER
REFER TO THIS NUMBER

551147973

PAGE 3

ORIGIN	HOST REVENUE	ADV. I/L AMT.	BYD. I/L AMT.

SHIPPER B/L OR GBL NUMBER

ROUTE (CARRIERS, PROS, JUNCTIONS)

BILL TO

IM	NO. PCS.	DESCRIPTION OF ARTICLES AND MARKS	WEIGHT	RATE	TOTAL CHARGES
		2 REQUEST			

ASA SERVICES SMITH'S

THIS BILL IS NOW PAST DUE. PLEASE REMIT OR ADVISE
REASON FOR NON PAYMENT.
IF PAYMENT HAS BEEN MADE, PLEASE DISREGARD THIS NOTICE.

DATE SHIPPED									
12/14/83	SHIP TO - RAPID MOUNT AND FINISH CO				4300 No. 47TH ST.		CHICAGO		IL 60632
	SOLD TO - HERZOG STORE FIXTURE	1034 W MADISION STRE					CHICAGO		IL 60607
	CNTRL NO - 00280	CUST PO - P 5280	ITEM NO - 203	SHIP QTY-	12	EXT AMT -	130.80		

SHIPMENTS TO CUSTOMERS - MEXICO PRODUCTS 2/15/84 PAGE 25

DATE SHIPPED									
	SHIP TO - BENNIGAN'S #9494	ALL CHICAGOLAND MGS	1790 CORTLAND COURT				ADDISON		IL 60101
	SOLD TO - STEAK AND ALE	PO BOX 222102					DALLAS		TX 75222
12/14/83	CNTRL NO - E0134	CUST PO - 031089	ITEM NO - 703	SHIP QTY-	9	EXT AMT -	231.39		
12/14/83	CNTRL NO - E0134	CUST PO - 031089	ITEM NO - 703	SHIP QTY-	6	EXT AMT -	173.76		
12/14/83	CNTRL NO - E0134	CUST PO - 031089	ITEM NO - 604	SHIP QTY-	1	EXT AMT -	70.90		
DATE SHIPPED	SHIP TO - CHICAGO PHONE CO.	175 N. FRANKLIN					CHICAGO		IL 60606
	SOLD TO - SHELBY WILLIAMS	PO 1028/5303 E TENNE					MORRISTOWN		TN 37814
12/14/83	CNTRL NO - KC188	CUST PO - B 4845	ITEM NO - 603	SHIP QTY-	19	EXT AMT -	543.97		
12/14/83	CNTRL NO - KC188	CUST PO - B 4845	ITEM NO - 603	SHIP QTY-	5	EXT AMT -	175.45		
DATE SHIPPED	SHIP TO - FALCON PRODUCTS	1191 MERCHANDISE MART					CHICAGO		IL 60654
	SOLD TO - ALAN PETERS	APT 7510-175 E DELAW					CHICAGO		IL 60611
12/15/83	CNTRL NO - SU034	CUST PO - B. MEYERS	ITEM NO - 903	SHIP QTY-	1	EXT AMT -	.00		
DATE SHIPPED	SHIP TO - RIVERWOODS APRATMENT	300 E. RIVER STREET					KANKAKEE		IL 60901
	SOLD TO - MH INTERIORS	594 KENNEDY DR					KANKAKEE		IL 60901
12/16/83	CNTRL NO - DC972	CUST PO - 2549483250	ITEM NO - 204	SHIP QTY-	13	EXT AMT -	426.01		
DATE SHIPPED	SHIP TO - BOWMANVILLE CAFE	5155 NORTH LINCOLN AVE					CHICAGO		IL 60625
	SOLD TO - DESIGN WORKS INC	825 CASS AVE SUITE 1					WESTMONT		IL 60559
12/16/83	CNTRL NO - D0308	CUST PO - P 5066	ITEM NO - 203	SHIP QTY-	3	EXT AMT -	66.21		
12/16/83	CNTRL NO - D0308	CUST PO - P 5066	ITEM NO - 204	SHIP QTY-	11	EXT AMT -	385.00		
12/16/83	CNTRL NO - D0308	CUST PO - P 5066	ITEM NO - 2301	SHIP QTY-	10	EXT AMT -	521.50		
12/16/83	CNTRL NO - D0308	CUST PO - P 5066	ITEM NO - ANGLBRKT	SHIP QTY-	10	EXT AMT -	49.50		
DATE SHIPPED	SHIP TO - WARNER OFFICE EQUIP	1713 BROADWAY					MATOON		IL
	SOLD TO - WARNER OFFICE EQUIP	1713 BROADWAY					MATOON		IL 61938
12/16/83	CNTRL NO - D0423	CUST PO - 3475-A00	ITEM NO - 1902	SHIP QTY-	1	EXT AMT -	50.95		
DATE SHIPPED	SHIP TO - FEDERAL KEMPER	INSURANCE CO	2001 E. MOUND ROAD				DECATUR		IL 62526
	SOLD TO - LINCOLN OFFICE	ROUTE 10 WEST					LINCOLN		IL 62656
12/19/83	CNTRL NO - D0254	CUST PO - 37-636-0	ITEM NO - 3303	SHIP QTY-	2	EXT AMT -	189.84		
DATE SHIPPED	SHIP TO - BALLARD NURSING CTR	9300 BALLARD ROAD					DES PLAINES		IL 60016
	SOLD TO - ALAN PETERS	APT 7510-175 E DELAW					CHICAGO		IL 60611
12/21/83	CNTRL NO - D0121	CUST PO - 2845	ITEM NO - 3304	SHIP QTY-	1	EXT AMT -	111.15		
DATE SHIPPED	SHIP TO - RAYMOND GREEN & ASSO	153 W HUBBARD ST					CHICAGO		IL 60610
	SOLD TO - ALAN PETERS	APT 7510-175 E DELAW					CHICAGO		IL 60611
12/21/83	CNTRL NO - D0174	CUST PO - 1102	ITEM NO - 903	SHIP QTY-	1	EXT AMT -	90.45		
DATE SHIPPED	SHIP TO - CONTRACT INT FOR BUS	500 NORTH ORLEANS					CHICAGO		IL
	SOLD TO - CONTRACT INT FOR BUS	500 NORTH ORLEANS					CHICAGO		IL 60610
12/21/83	CNTRL NO - D0194	CUST PO - 086892-1-03	ITEM NO - 1502	SHIP QTY-	2	EXT AMT -	88.62		
DATE SHIPPED	SHIP TO - DYNAQUEST	6460 W. CORTLAND ST					CHICAGO		IL 60635
	SOLD TO - CHAMPION INC	7437 S VINCENNES AVE					CHICAGO		IL 60621
12/21/83	CNTRL NO - D0378	CUST PO - 4383	ITEM NO - 1502	SHIP QTY-	6	EXT AMT -	269.70		

DATE SHIPPED									
	SHIP TO - 94TH AERO SQUADRON	1070 S MILWAUKEE AVE					WHEELING	IL	60090
	SOLD TO - SPECIALTY RESTAURANT	2977 REDONDO AVE					LONG BEACH	CA	90806
12/22/83	CNTRL NO - E0433	CUST PO - 95107FSP	ITEM NO - 203	SHIP QTY-	10 EXT AMT -	109.00			
DATE SHIPPED	SHIP TO - DOMESTIC UTILITY	SERVICES	2640 GOLF ROAD				GLENVIEW	IL	60025
	SOLD TO - SEARS ROEBUCK CONTRA	7447 SKOKIE BLVD					SKOKIE	IL	60077
12/27/83	CNTRL NO - DC616	CUST PO - 185718	ITEM NO - 2804	SHIP QTY-	1 EXT AMT -	84.94			
DATE SHIPPED	SHIP TO - COLONIAL PARKWAY	840 E MAIN ST					DANVILLE	IL	61832
	SOLD TO - REST. EQ & SPLY CO I	BOX 2720 STA A-209 E					CHAMPAIGN	IL	61820
12/27/83	CNTRL NO - DD300	CUST PO - 2710	ITEM NO - 203	SHIP QTY-	12 EXT AMT -	189.96			
12/27/83	CNTRL NO - DD300	CUST PO - 2710	ITEM NO - 604	SHIP QTY-	1 EXT AMT -	67.71			
DATE SHIPPED	SHIP TO - GEORGE NAFFS	MOVING & STOR	1735 EAST DAVIS ST				ARLINGTON HTS	IL	60005
	SOLD TO - ALAN PETERS	APT 7510-175 E DELAW					CHICAGO	IL	60611
12/27/83	CNTRL NO - DD358	CUST PO - 4332	ITEM NO - 204	SHIP QTY-	1 EXT AMT -	57.38			
DATE SHIPPED	SHIP TO - G.D. SEARLE & CO	4901 SEARLE PARKWAY	SZABO FOOD SER. CO.				SKOKIE	IL	60077
	SOLD TO - SZABO FOOD SERVICE C	2000 SPRING RT-SUITE					OAK BROOK	IL	60521
12/28/83	CNTRL NO - DD282	CUST PO - A 02597	ITEM NO - 2102	SHIP QTY-	2 EXT AMT -	155.82			
12/28/83	CNTRL NO - DD282	CUST PO - A 02597	ITEM NO - 2102	SHIP QTY-	9 EXT AMT -	596.52			
DATE SHIPPED	SHIP TO - WESLEY TOWERS	DOUGLAS NURSING CTR	1613 CHARLESTON AVE				MATTON	IL	61938
	SOLD TO - OMNI MANUFACTURING I	3580 PIERCE DRIVE					ATLANTA	GA	30341
12/29/83	CNTRL NO - BC351	CUST PO - 734-02	ITEM NO - 204	SHIP QTY-	7 EXT AMT -	185.15			
DATE SHIPPED	SHIP TO - OFFICE EQUIP CO	OF CHGO.	5150 W ROOSEVELT RD				CHICAGO	IL	60650
	SOLD TO - OFFICE EQ CO OF CHIC	223 W LAKE ST					CHICAGO	IL	60606
12/29/83	CNTRL NO - DD093	CUST PO - A05424-1-17	ITEM NO - 3303	SHIP QTY-	3 EXT AMT -	151.59			
DATE SHIPPED	SHIP TO - PEKIN COMMUNITY	HIGH SCHOOL	207 N 9TH S				PEKIN	IL	61554
	SOLD TO - SIDNEY HARRISON COMP	610 SW ADAMS STREET					PEORIA	IL	61602
12/29/83	CNTRL NO - DD365	CUST PO - 19986	ITEM NO - 1902	SHIP QTY-	14 EXT AMT -	388.78			
12/29/83	CNTRL NO - DD365	CUST PO - 19986	ITEM NO - 1902	SHIP QTY-	80 EXT AMT -	2,384.80			
DATE SHIPPED	SHIP TO - VILLAGE SQ REST	ROUTE 14 1/4 MILE	WEST OF RT 31				CRYSTAL LAKE	IL	60014
	SOLD TO - SHELBY WILLIAMS	PO 1028/5303 E TENNE					MORRISTOWN	TN	37814
12/29/83	CNTRL NO - KD443	CUST PO - B 4871	ITEM NO - 200	SHIP QTY-	1 EXT AMT -	7.26			
DATE SHIPPED	SHIP TO - ADDANTE PIZZA	904 WEST ARMY TRAIL					CAROL STREAM	IL	60187
	SOLD TO - PIERCE EQUIPMENT CO	5326 E AVE					LAGRANGE	IL	60525
1/03/84	CNTRL NO - DD064	CUST PO - 10-12-83A	ITEM NO - 203	SHIP QTY-	10 EXT AMT -	166.70			
1/03/84	CNTRL NO - DD064	CUST PO - 10-12-83A	ITEM NO - 203	SHIP QTY-	7 EXT AMT -	91.00			
1/03/84	CNTRL NO - DD064	CUST PO - 10-12-83A	ITEM NO - 204	SHIP QTY-	2 EXT AMT -	45.72			
1/03/84	CNTRL NO - DD064	CUST PO - 10-12-83A	ITEM NO - 2301	SHIP QTY-	4 EXT AMT -	187.72			
1/03/84	CNTRL NO - DD064	CUST PO - 10-12-83A	ITEM NO - ANGLBRKT	SHIP QTY-	4 EXT AMT -	17.80			
DATE SHIPPED	SHIP TO - RIVERWOODS APRATMENT	300 E. RIVER STREET					KANKAKEE	IL	60901
	SOLD TO - MH INTERIORS	594 KENNEDY DR					KANKAKEE	IL	60901
1/05/84	CNTRL NO - DC972	CUST PO - 2549483250	ITEM NO - 2804	SHIP QTY-	2 EXT AMT -	150.04			

1/05/84	CNTRL NO - DC972	CUST PO - 2549483250	ITEM NO - 2848S	SHIP QTY-	1 EXT AMT -	33.52	
1/05/84	CNTRL NO - DC972	CUST PO - 2549483250	ITEM NO - 2804	SHIP QTY-	1 EXT AMT -	90.57	
1/05/84	CNTRL NO - DC972	CUST PO - 2549483250	ITEM NO - 2804	SHIP QTY-	1 EXT AMT -	103.15	

DATE SHIPPED							
	SHIP TO - LYONS TWP. NORTH HIGH SCHOOL				100 S BRIANARD AVE	LA GRANGE	IL 60525
	SOLD TO - PRAIRIE STATE ASSOC RR 2 BOX 94					CHICAGO HEIGHTS	IL 60411
1/05/84	CNTRL NO - DD334	CUST PO - B 39012	ITEM NO - 2402	SHIP QTY-	2 EXT AMT -	137.86	
1/05/84	CNTRL NO - DD334	CUST PO - B 39012	ITEM NO - 2402	SHIP QTY-	3 EXT AMT -	234.36	
1/05/84	CNTRL NO - DD334	CUST PO - B 39012	ITEM NO - 2402	SHIP QTY-	6 EXT AMT -	413.58	

DATE SHIPPED							
	SHIP TO - PETERSON DESIGN 2016 WALNUT ST					MURPHYSBORO	IL
	SOLD TO - PETERSON DESIGN 2016 WALNUT ST					MURPHYSBORO	IL 62966
1/05/84	CNTRL NO - DD441	CUST PO - VERBAL	ITEM NO - 3304	SHIP QTY-	3 EXT AMT -	295.50	
1/05/84	CNTRL NO - DD441	CUST PO - VERBAL	ITEM NO - 3303	SHIP QTY-	2 EXT AMT -	118.20	

DATE SHIPPED							
	SHIP TO - PRONTO REST INC 200 E CHESTNUT ST					CHICAGO	IL 60611
	SOLD TO - EDWARD DON AND COMPA 2500 S HARLEM AVE					N RIVERSIDE	IL 60546
1/09/84	CNTRL NO - DD318	CUST PO - FD 7267	ITEM NO - 1502	SHIP QTY-	32 EXT AMT -	1,336.32	

DATE SHIPPED							
	SHIP TO - SKOLNIKS OAKBROOK MALL # 64 1401 WEST 2ND STREET					OAKBROOK	IL 60521
	SOLD TO - KFC NATIONAL PURCH PO BOX 32033					LOUISVILLE	KY 40232
1/09/84	CNTRL NO - ED466	CUST PO - 159593	ITEM NO - 203	SHIP QTY-	4 EXT AMT -	86.44	

DATE SHIPPED							
	SHIP TO - SBM BUSINESS EQUIP C 501 LOCUST STREET					STERLING	IL
	SOLD TO - SBM BUSINESS EQUIP C 501 LOCUST STREET					STERLING	IL 61081
1/10/84	CNTRL NO - DD393	CUST PO - 002351	ITEM NO - 1902	SHIP QTY-	5 EXT AMT -	170.50	
1/10/84	CNTRL NO - DD393	CUST PO - 002351	ITEM NO - 1903	SHIP QTY-	5 EXT AMT -	355.75	

DATE SHIPPED							
	SHIP TO - PALMER HOUSE 17 E MONROE ST					CHICAGO	IL
	SOLD TO - HILTON EQUIPMENT COR 1801 CENTURY PARK EA					LOS ANGELES	CA 90067
1/10/84	CNTRL NO - EC605	CUST PO - 342125GCN	ITEM NO - 203	SHIP QTY-	41 EXT AMT -	506.35	

DATE SHIPPED							
	SHIP TO - CHARLESTON OFFICE EQ 512 6TH ST					CHARLESTON	IL 61920
	SOLD TO - KRUEGER METAL PRODUC PO 8100-1330 BELLEVU					GREEN BAY	WI 54308
1/11/84	CNTRL NO - AE650	CUST PO - N 21186A	ITEM NO - 204	SHIP QTY-	1 EXT AMT -	43.11	

DATE SHIPPED							
	SHIP TO - PRAIRIE STATE COMMUNITY COLLEGE 197TH ST & HALSTED					CHICAGO HEIGHTS	IL 60411
	SOLD TO - HERZOG STORE FIXTURE 1034 W MADISON STRE					CHICAGO	IL 60607
1/11/84	CNTRL NO - DD364	CUST PO - VBL SHERWIN	ITEM NO - 1902	SHIP QTY-	60 EXT AMT -	2,930.40	
1/11/84	CNTRL NO - DD364	CUST PO - VBL SHERWIN	ITEM NO - 1902	SHIP QTY-	50 EXT AMT -	2,837.00	

DATE SHIPPED							
	SHIP TO - REST. EQ & SPLY CO I BOX 2720 STA A-209 E					CHAMPAIGN	IL
	SOLD TO - REST. EQ & SPLY CO I BOX 2720 STA A-209 E					CHAMPAIGN	IL 61820
1/11/84	CNTRL NO - DD525	CUST PO - VBL WSP	ITEM NO - 203	SHIP QTY-	1 EXT AMT -	13.89	

DATE SHIPPED							
	SHIP TO - ST. VINCENTS HOSP 201 E PLEASANT					TAYLORVILLE	IL 62568
	SOLD TO - MRG/ARCHITECTURAL IN 611 EAST STATE					JACKSONVILLE	IL 62650
1/12/84	CNTRL NO - DD457	CUST PO - 110	ITEM NO - 2703	SHIP QTY-	5 EXT AMT -	309.85	

DATE SHIPPED								
	SHIP TO - FOREMAN COMPANY	21 W 175 HILL AVE				GLEN ELLYN	IL	
	SOLD TO - FOREMAN COMPANY	21 W 175 HILL AVE				GLEN ELLYN	IL	60137
1/12/84	CNTRL NO - D0569	CUST PO - 1229	ITEM NO - 203	SHIP QTY-	4	EXT AMT -	66.68	
1/12/84	CNTRL NO - D0569	CUST PO - 1229	ITEM NO - 203	SHIP QTY-	6	EXT AMT -	122.46	
DATE SHIPPED								
	SHIP TO - WILEY OFFICE EQUIP C	301 EAST LAUREL STRE				SPRINGFIELD	IL	
	SOLD TO - WILEY OFFICE EQUIP C	301 EAST LAUREL STRE				SPRINGFIELD	IL	62703
1/13/84	CNTRL NO - D0181	CUST PO - 31783	ITEM NO - 2402	SHIP QTY-	3	EXT AMT -	234.36	
DATE SHIPPED								
	SHIP TO - DESKS INC	SECTION B 3RD FLOOR 459 E. ILLINOIS				CHICAGO	IL	60611
	SOLD TO - DESKS INC	540 NORTH LA SALLE S				CHICAGO	IL	60610
1/13/84	CNTRL NO - D0405	CUST PO - 66-128300158	ITEM NO - 203	SHIP QTY-	20	EXT AMT -	397.20	
1/13/84	CNTRL NO - D0405	CUST PO - 66-128300158	ITEM NO - 204	SHIP QTY-	2	EXT AMT -	63.00	
1/13/84	CNTRL NO - D0405	CUST PO - 66-128300158	ITEM NO - 204	SHIP QTY-	67	EXT AMT -	2,110.50	
DATE SHIPPED								
	SHIP TO - FOREMAN COMPANY	21 W 175 HILL AVE				GLEN ELLYN	IL	
	SOLD TO - FOREMAN COMPANY	21 W 175 HILL AVE				GLEN ELLYN	IL	60137
1/13/84	CNTRL NO - D0476	CUST PO - K.C.	ITEM NO - 1903	SHIP QTY-	32	EXT AMT -	1,844.16	
DATE SHIPPED								
	SHIP TO - ROSEMONT PURCHASING	2200 E DEVON-SUITE 2				ROSEMONT	IL	
	SOLD TO - ROSEMONT PURCHASING	2200 E DEVON-SUITE 2				ROSEMONT	IL	60018
1/13/84	CNTRL NO - CC159	CUST PO - A054317	ITEM NO - 3203	SHIP QTY-	100	EXT AMT -	4,882.00	
DATE SHIPPED								
	SHIP TO - SKOLNIKS OAKBROOK	MALL # 64	1401 WEST 2ND STREET			OAKBROOK	IL	60521
	SOLD TO - KFC NATIONAL PURCH	PO BOX 32033				LOUISVILLE	KY	40232
1/13/84	CNTRL NO - E0466	CUST PO - 159593	ITEM NO - 203	SHIP QTY-	3	EXT AMT -	64.83	
DATE SHIPPED								
	SHIP TO - COMMONWEALTH EDISON	COMPANY	2601 NORTH 21ST ROAD			MARSEILLES	IL	61341
	SOLD TO - KRUEGER METAL PRODUC	PO 8100-1330 BELLEVU				GREEN BAY	WI	54308
1/16/84	CNTRL NO - AE504	CUST PO - 33686	ITEM NO - 603	SHIP QTY-	10	EXT AMT -	252.50	
DATE SHIPPED								
	SHIP TO - ELMHURST YMCA	211 W. FIRST STREET				ELMHURST	IL	60126
	SOLD TO - KRUEGER METAL PRODUC	PO 8100-1330 BELLEVU				GREEN BAY	WI	54308
1/16/84	CNTRL NO - AE661	CUST PO - 31472A	ITEM NO - 203	SHIP QTY-	2	EXT AMT -	70.66	
DATE SHIPPED								
	SHIP TO - HENRICKSEN	1801 OAKTON STREET				DES PLAINES	IL	60018
	SOLD TO - HENRICKSEN & CO INC	1753 OAKTON ST				DESPLAINS	IL	60018
1/17/84	CNTRL NO - D0259	CUST PO - 20358	ITEM NO - 2603	SHIP QTY-	4	EXT AMT -	678.40	
DATE SHIPPED								
	SHIP TO - LINCOLN OFFICE WHSE	255 S CHICAGO ST				LINCOLN	IL	62656
	SOLD TO - LINCOLN OFFICE	ROUTE 10 WEST				LINCOLN	IL	62656
1/17/84	CNTRL NO - D0394	CUST PO - 31-070-0	ITEM NO - 2804	SHIP QTY-	39	EXT AMT -	3,355.56	
DATE SHIPPED								
	SHIP TO - THE STUDIO REST	8717 LINCOLN AVE				MORTON GROVE	IL	60053
	SOLD TO - DESIGN WORKS INC	825 CASS AVE SUITE L				WESTMONT	IL	60559
1/17/84	CNTRL NO - D0433	CUST PO - 5003	ITEM NO - 604	SHIP QTY-	1	EXT AMT -	115.52	

SHIPMENTS TO CUSTOMERS - MEXICO PRODUCTS

1/17/84	CNTRL NO - DD433	CUST PO - 5003	ITEM NO - 604	SHIP QTY-	4 EXT AMT -	259.80
1/17/84	CNTRL NO - DD433	CUST PO - 5003	ITEM NO - 504	SHIP QTY-	8 EXT AMT -	377.36

DATE SHIPPED

1/17/84	SHIP TO - DYNASCAN	6460 W. CORTLAND ST			CHICAGO	IL 60635
	SOLD TO - CRAMPTON INC	7437 S VINCENNES AVE			CHICAGO	IL 60621
	CNTRL NO - DD565	CUST PO - 3400	ITEM NO - 1502	SHIP QTY-	2 EXT AMT -	89.84

DATE SHIPPED

1/18/84	SHIP TO - SLATER - MR. RENTS	222 W. HUBBARD			CHICAGO	IL 60610
	SOLD TO - THE SLATER COMPANY	300 W HUBBARD			CHICAGO	IL 60610
	CNTRL NO - DD580	CUST PO - 59325	ITEM NO - 803	SHIP QTY-	8 EXT AMT -	267.36

DATE SHIPPED

1/19/84	SHIP TO - BYCZEK WHSE #45300	940 PITNER			EVANSTON	IL 60202
	SOLD TO - BYCZEK EQUIPMENT CO	3924 W DEVON AVE			CHICAGO	IL 60659
	CNTRL NO - DD564	CUST PO - 68486	ITEM NO - 2703	SHIP QTY-	7 EXT AMT -	353.71

DATE SHIPPED

1/19/84	SHIP TO - ROSEMONT PURCHASING	2200 E DEVON-SUITE 2			ROSEMONT	IL
	SOLD TO - ROSEMONT PURCHASING	2200 E DEVON-SUITE 2			ROSEMONT	IL 60018
	CNTRL NO - EC159	CUST PO - A054317	ITEM NO - 3203	SHIP QTY-	100 EXT AMT -	4,882.00

DATE SHIPPED

1/20/84	SHIP TO - INTERIOR CRAFT	2513 W CULLERTON AVENUE			CHICAGO	IL 60608
	SOLD TO - INTERIOR CRAFTS INC	2513 W CULLERTON AVE			CHICAGO	IL 60608
	CNTRL NO - DD460	CUST PO - 12944	ITEM NO - 1902	SHIP QTY-	3 EXT AMT -	167.94

DATE SHIPPED

1/20/84	SHIP TO - GARCIA'S PIZZA-IN-A-	PAN WAREHOUSE	804 N. NEIL ST		CHAMPAIGN	IL 61820
	SOLD TO - REST. EQ & SPLY CO I	BOX 2720 STA A-209 E			CHAMPAIGN	IL 61820
1/20/84	CNTRL NO - DD585	CUST PO - 2795	ITEM NO - 504	SHIP QTY-	25 EXT AMT -	981.00
	CNTRL NO - DD585	CUST PO - 2795	ITEM NO - 203	SHIP QTY-	23 EXT AMT -	416.76

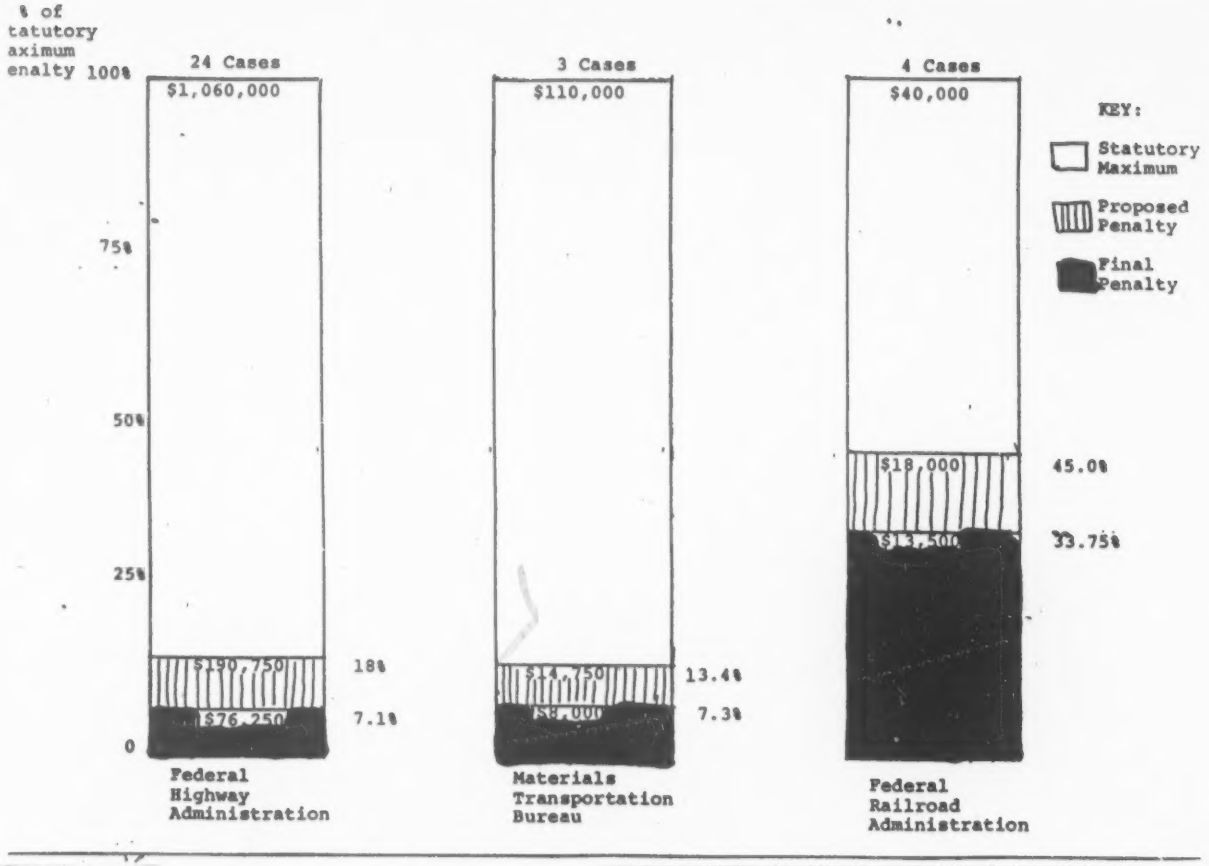
DATE SHIPPED

1/20/84	SHIP TO - PALMER HOUSE	17 E MONROE STREET			CHICAGO	IL
	SOLD TO - HILTON EQUIPMENT COR	1801 CENTURY PARK EA			LOS ANGELES	CA 90067
	CNTRL NO - ED450	CUST PO - 342358GCN	ITEM NO - 203	SHIP QTY-	40 EXT AMT -	469.60

DATE SHIPPED

1/25/84	SHIP TO - STOCKS INC	510 NORTH NEIL			CHAMPAIGN	IL
	SOLD TO - STOCKS INC	510 NORTH NEIL			CHAMPAIGN	IL 61820
	CNTRL NO - DD335	CUST PO - 3770	ITEM NO - 2402	SHIP QTY-	1 EXT AMT -	82.23

DATE SHIPPED

1/25/84	SHIP TO - BOWNANVILLE CAFETERI	5155 W. LINCOLN			CHICAGO	IL 60625
	SOLD TO - DESIGN WORKS INC	825 CASS AVE SUITE 1			WESTMONT	IL 60559
	CNTRL NO - DD622	CUST PO - 5270	ITEM NO - 200	SHIP QTY-	1 EXT AMT -	21.95

DEPARTMENT OF TRANSPORTATION: Examples of Penalty Actions
Concerning the Hazardous Materials Regulations